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Official Report of Debates (Hansard)

Thursday 30 May 2013

Journal des débats (Hansard)

Jeudi 30 mai 2013

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 30 May 2013

Jeudi 30 mai 2013

The committee met at 0831 in room 151.

MEMBERS' PRIVILEGES

MS. DANIELA MORAWETZ

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy officially to order. I would invite our first presenter to please come forward: Ms. Daniela Morawetz, president of the Chartwell-Maple Grove Residents Association, Oakville. Welcome, Ms. Morawetz. I'd invite you to please be sworn in by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Ms. Daniela Morawetz: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Morawetz. I will invite you to begin a five-minute opening address, to be followed by 20-minute rotations and beyond that as well. Please begin now.

Ms. Daniela Morawetz: Thank you very much. Good morning. My name is Daniela Morawetz and I am president of the Chartwell-Maple Grove Residents Association in Oakville. CMGRA, as we're known, is a non-partisan community organization comprised of about 1,600 households, seven schools, four day care centres, three churches and one synagogue. Our claim to fame is that our area of Oakville is located literally across the tracks from the site where TransCanada proposed to build a power plant at the behest of the Ontario Power Authority.

CMGRA was founded in April 2009 by myself and a small group of others when it became apparent that there was a proposal to locate a huge gas-fired power plant near our neighbourhood. We started a local awareness campaign and began distributing a petition modelled on the one that was already circulating in the neighbouring Mississauga communities. In June, our first public event was to hold a drive-through petition on a Saturday at a local school. Unbelievably, over 800 people drove, biked, walked and stopped to sign.

Most people never believed the site to be chosen would be the one closest to established residential communities, including ours. It never made sense, and that was what people were reacting to. Our worst fears

were realized when the OPA awarded the contract to TransCanada in September.

What twisted process could lead to a decision to locate a 900-megawatt natural-gas-fired power plant 400 metres from homes in a long-established neighbourhood, 320 metres from one nearby school and within 750 metres of three others, a couple of car lengths away from one of the most heavily used railway lines in Canada and in a location where you couldn't build a wind turbine because setbacks wouldn't meet provincial regulations? How could this happen? How could this be safe? And where was the common sense?

Just when we thought things could not get worse, in February 2010 there was the massive power explosion at the power plant in Connecticut, which killed six and injured many more. That accident damaged homes up to eight kilometres away. All of the CMGRA area is within four kilometres of the Oakville site, and this plant was to be much larger.

On March 2, 2010, CMGRA members were very active participants in the rally that was held here at Queen's Park that drew over 3,000 concerned Oakville and Mississauga residents. That sort of response is unheard of from these quiet bedroom communities. People were concerned about safety. People were concerned about air quality. We live in one of the most stressed airsheds in Ontario. People were concerned because electricity demand in the area was not increasing at the accelerating rate that the OPA predicted; it was declining. But was anybody in the government paying attention?

In October, it was clear that someone had listened. Someone had let common sense prevail, and the decision to cancel the plant was announced. Are we relieved? Obviously. Are we satisfied? Absolutely not. Until the provincial government takes a long, hard look at the process that created the situation in the first place, no Ontario community is safe from having something like this happen to them. The rules for siting a power plant haven't changed.

What is important now is that all parties get back to work on fixing the process. Stop the finger-pointing and focus on using this situation as an opportunity to improve policy and process. You are elected to accomplish something. Here is an opportunity to do something meaningful to protect communities from thoughtless administrative policy and needless expense.

Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Morawetz. I begin with the government side. Mr. Delaney, 20 minutes.

Mr. Bob Delaney: Good morning, Daniela. Thank you for joining us today.

Could you tell the committee a little bit more about the Chartwell-Maple Grove Residents Association—you touched on it very briefly—and talk about what role your organization played at the time and still may play in the community?

Ms. Daniela Morawetz: As I mentioned in my comments, we started in early 2009, myself and about three or four other concerned citizens who started hearing rumours about this power plant. We had other issues in the neighbourhood at the same time that we were concerned about, and we realized that in our area, our specific area, there was no organization, so we started one. We were very fortunate that the first group of volunteers who came out were incredibly dedicated and very creative and thoughtful. We got going pretty quickly and we started getting attention pretty quickly.

We started working with the other organizations, getting the other residents' associations in Oakville involved. We liaised very closely with Mississauga because they were already up and running as a group; we weren't. We became a group. We did sign campaigns, letter drops, whatever. We held our own rally—not quite as big as the one here at Queen's Park, but it was a pretty big one—in July. We originally came down here, actually, on September 28, 2009, to Queen's Park to be part of a rally, but it was cancelled due to rain.

Just after that, two days later, the TransCanada announcement was made. At that point, we realized we had a bigger battle on our hands than just our little organization and liaising with others was going to work, so there was a meeting that was held at the local school that involved a number of key community people. The result of that was C4CA. I'm actually the one who took the incorporation papers for C4CA down here to register them.

I did not sit on the board of C4CA. Our former president, Doug MacKenzie, was the initial president of C4CA, and I stayed on to run CMGRA because community organizations are important, even when issues go by the wayside, because there are always issues.

We still exist. We're still very active. We're bigger than ever. The power plant was our kick-start, but we've had other things. Our credibility in the neighbourhood is quite strong. We have really good reach. When we ask people to send a letter to do something, they seem to listen to us. We're very proud of the organization we've built and we will continue to be active in our community.

Mr. Bob Delaney: Well, it's very nice to have you here as part of what you called a long, hard look at the process.

In your remarks, you touched on the hazards resulting from the incident in Connecticut, the proximity to homes and schools, the proximity to the rail line and the Oakville and south Mississauga airshed. Were there any other concerns that you had at the time?

Ms. Daniela Morawetz: Particularly in our area, the proximity to the rail line was a big issue. When the derailment happened in Burlington just last year, we all sort of breathed a big sigh of relief.

We took the time to drive around and look at some of these sites. It was almost impossible to fathom. We've got the Ford plant. We know what big industrial complexes look like, but when you look at what a power plant does and what it produces in emissions, in water vapour, and just where it was going to be located on this really tiny, narrow patch of land right beside the railroad tracks and right across the street from the community, it just didn't make sense. Our concerns were for all those reasons. It just didn't make sense.

Mr. Bob Delaney: Mayor Burton brought in some very revealing aerial photos and showed us that in up-close-and-personal detail.

What was the community's reaction when the government announced on October 7, 2010, that the plant would be relocated?

0840

Ms. Daniela Morawetz: A huge sigh of relief, obviously; we were pleased. But the community is still engaged, insofar as that happened in our community, but this can still happen. People got quite involved in this process and there's still a great deal of concern that nothing has changed, whether it happens in Oakville or it happens in Rosedale or Scarborough. Someone could find a site and site a power plant if the government deemed it necessary. It could happen to any community—big, small, in Toronto, outside Toronto—and that is still a concern to us, that that has not changed.

Mr. Bob Delaney: Were you in touch with your MPP, Kevin Flynn, during this time?

Ms. Daniela Morawetz: Oh, yes.

Mr. Bob Delaney: And I take it he was helpful to you?

Ms. Daniela Morawetz: Yes, eventually. I think we had to get pretty loud for a while, but yes, he was. He was very helpful and, in the end, he saw what everybody was talking about. He saw what we needed and stood up for the community and we were very appreciative of that and the work that he's done subsequently in trying to introduce legislation on buffer zones, which I think is really important. It's a shame that we're spending time doing this instead of that.

Mr. Bob Delaney: Would it be fair to say that the province made the right decision on the relocation of the plant?

Ms. Daniela Morawetz: Oh, absolutely; no question.

Mr. Bob Delaney: Just to explore a few issues around the siting of the Oakville plant: In terms of the decision to procure the plant, we know there was a government directive back in August 2008 asking the Ontario Power Authority to procure a plant in what they called the southwest GTA. The directive stated that there were reliability issues in that area due to challenges from the robust growth in the GTA, while at the same time, of course, coal-fired generation was being phased out. It

was the OPA that was then responsible for the request for proposals and the procurement process, which is what resulted in that Oakville site having been chosen. But, as you pointed out, factors have changed, and in the summer of 2010, as the long-term energy plan was being updated, the Ontario Power Authority and the Ministry of Energy realized the changing demand needs and successful conservation efforts meant that a power plant was no longer needed and that a transmission upgrade would be sufficient. What that meant was that the circumstances in 2008 were very different from those in 2010. Would it be fair to say that was a decision that in 2010 needed to be revisited?

Ms. Daniela Morawetz: Absolutely, and I think that was one of the main messages that C4CA put forward, the information we were getting. I'm not an expert on power generation and demand, but I will say that we haven't frozen in the dark in Oakville, nor has anybody else that I know of in the southern GTA. The information we were getting was the same sort of thing. We couldn't see why this plant was needed—aside from the horrendous siting, why it was needed. It just didn't make sense.

Mr. Bob Delaney: Okay. You were interviewed by Matt Galloway on Metro Morning on May 1. He asked about the siting of this particular plant, and at the time you said that the process in awarding these sorts of contracts and deciding where they should go—there's something wrong with that process. In fact, of course, we agree with you. The Premier has committed that there's going to be more local decision-making in the siting of energy infrastructure.

I guess early on in your time with us, what advice would you have to help ensure that local voices such as yours and your group's are heard throughout the process?

Ms. Daniela Morawetz: I think, again, similar to comments made by Frank Clegg before this committee, that somewhere in the world there's got to be a better example of how to locate a power facility that takes into consideration the environment and the community at a very early stage. I think the powers that be here should be able to find a better way of doing things, and that is our first concern. We would love to see the public engaged well before it got to the stage where we had to get involved.

Mr. Bob Delaney: Okay. Ontario's Minister of Energy, Bob Chiarelli, has asked the Ontario Power Authority and a body called the Independent Electricity System Operator to develop recommendations for a new integrated regional energy planning process, which is a whole mouthful of words, that would focus on improving how large energy infrastructure projects are sited in the province. The work will also consider recommendations from this committee related to the future sitings of generation stations, which is, of course, why you're here. Would you have any recommendations that you'd like the committee to bring back to the government on how future sites should be selected?

Ms. Daniela Morawetz: I'm not an engineer or a power expert. I probably know more about it now than I

ever wanted to, but nevertheless, I'm not nearly an expert. I would deem that the government is more than capable of having learned, perhaps, from this lesson that there are better ways to do things. I think C4CA referred to a model in California that seems to work reasonably well. I'm sure there are others. I would suggest that they look worldwide for examples and use those as best-case examples and implement it that way.

Other than that, I really don't have a whole lot of advice. There's no doubt that we need legislation to provide buffer zones between power plants and communities, we need a siting process that engages the public at a much earlier stage and we need stronger environmental protection that particularly takes into account airsheds, such as the Clarkson airshed, that are stressed. Those are my big three.

Mr. Bob Delaney: Although in saying that, you're not saying that you're philosophically opposed to the generation and transmission of electricity.

Ms. Daniela Morawetz: No.

Mr. Bob Delaney: Okay. That's good.

Premier Wynne testified before this committee a couple of weeks ago. She was asked about the role of elected officials in the decision to relocate this power plant and others as well. She replied that the role of elected officials was to listen to the communities and to make sure that these local voices were heard. Her words at the time were, "There was advice that was given ... siting expertise ... but ... the consideration of the impact on community and the voices of community were not taken into account. So politicians in the end made the decision to relocate the gas plants."

That characterization that politicians are elected to represent their constituents, even if that sometimes goes against expert advice—is that one that you would agree with?

Ms. Daniela Morawetz: Certainly.

Mr. Bob Delaney: How did Kevin Flynn stack up in that regard?

Ms. Daniela Morawetz: Once he got on board, he was great. He did what we asked him to do. He spoke on our behalf, and that was what we asked for—and our mayor as well, who did an outstanding job coming down here, representing us, speaking on our behalf and implementing things.

Mr. Bob Delaney: Just to let you know that there's consistency, they both speak equally well of you.

The Liberal members weren't the only elected officials who opposed the plant. I think we know that both opposition parties opposed it as well. I think this is a point that you made on Metro Morning. You said on Metro Morning, "The opposition parties were in agreement that it was the right thing to do"—the cancellation, that is—"that building a plant there was the wrong thing to do." Would you agree that all three parties had committed to the people of Oakville that they would oppose the plant?

Ms. Daniela Morawetz: Definitely. I was going through my emails and notes, reviving memories of what

happened when and who said what. I've got copies of statements made by opposition members Ted Chudleigh and Mr. Taybuns—

Mr. Peter Tabuns: Tabuns.

Ms. Daniela Morawetz: Sorry, Tabuns—who spoke in the Legislature, actually, just before September 28, when we came down here, about—

Mr. Peter Tabuns: Before he signed the contract. Before you signed, I told you.

Anyway, go on. Sorry.

Ms. Daniela Morawetz: But they had spoken about the concern about the airshed, siting a power plant in a stressed airshed. There was no doubt—our local politicians were all on board. As I said, all parties were against siting a power plant in the airshed. Nobody said, “How much is it going to cost?” or put a maximum dollar value on cancelling it. What are you going to say—“We don't want to cancel it unless it costs less than \$25 million”?

Mr. Bob Delaney: As you've done your research and brought your documents with you, would you like the Clerk to copy them and distribute them to the committee members? She'll return them to you.

Ms. Daniela Morawetz: Well it's just—actually, it's from Hansard. I can give you the dates.

Mr. Bob Delaney: Okay, that's fine.

You've mentioned Mayor Burton a few times. He testified before the committee in March. He was asked about the work of the various local organizations. He stated that he was—and I'll use his words—“very impressed with the work of” Citizens for Clean Energy “in winning promises to stop the power plant from every party.”

Frank Clegg from C4CA also testified before the committee, and his words were, “[W]e met with all the parties and all the candidates and were given commitments by every candidate in the Oakville area that they would support cancelling the plant.”

0850

Did your organization as well, the Chartwell-Maple Grove Residents Association, meet with representatives of all three parties?

Ms. Daniela Morawetz: Generally speaking, we let C4CA take the lead, and that was what we had agreed on. Each of the residents' associations had representation on C4CA. Most of the lead work with the politicians was done by C4CA and not by the individual residents' associations by themselves. It was just more effective that way.

Mr. Bob Delaney: Okay. So based on what you said on Metro Morning, then, you are certain that all three parties ultimately made the same commitment, that if they had formed government, they, too, would cancel the plant or that they were opposed to the plant?

Ms. Daniela Morawetz: Certainly that they were opposed.

Mr. Bob Delaney: I have a couple of quotes that I'd like to read from some members who made statements on it. On October 7, 2010, Mr. Tabuns told Inside Halton, “I

don't agree with the Oakville power plant.” On December 10, 2010, NDP MPP Michael Prue said, “I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this killed.”

Although I'm belabouring what you've said, does that indicate, in your opinion, that the NDP supported the government's decision to relocate the plant?

Ms. Daniela Morawetz: I would assume, if you say that something is not right, that you don't agree with it. It doesn't mean, I guess, that you support, but it doesn't mean that you don't. I'm not a politician. In my mind, I would interpret that as agreement to support something.

Mr. Bob Delaney: Okay. In terms of the Progressive Conservatives, there's clearly no doubt that their party opposed the Oakville plant. On June 1, MPP Ted Chudleigh, the PC member from Halton, said, “The people of Oakville have told you they don't want the proposed” gas-fired “power plant, and I agree with them.” On September 25, 2011, during the last provincial election, PC leader Tim Hudak stated, “We've opposed these projects in Oakville and Mississauga.”

Was it your impression, prior to the last election, that the people of Oakville felt that, if elected, a PC government would stop that plant?

Ms. Daniela Morawetz: Just again, I can only speak from a personal standpoint. My personal opinion would probably be yes, but we didn't talk about directing people to vote for one party or another because they had their stand on the power plant. We were just concerned about the plant.

Mr. Bob Delaney: So after the election, when it was our government that was elected and fulfilled the commitments made by all three parties, you'll agree that, one way or the other, everybody wanted that plant stopped. City council wanted that plant stopped; the residents wanted that plant stopped; and the province stepped in and took action to stop it.

Ms. Daniela Morawetz: Yes.

Mr. Bob Delaney: Okay. In your Metro Morning interview, when you discussed the estimated cost for relocating the plant, you stated, “I do note that when we were arguing for this and we went to Queen's Park, and the opposition parties were also arguing to cancel this, nobody was saying, ‘Cancel it unless it costs less than \$100 million.’” Do you remember the statement and what you meant by that?

Ms. Daniela Morawetz: Yes, I did. It was an early morning, but yes, I do remember the statement.

Mr. Bob Delaney: That's the challenge with being interviewed in the early dawn hours.

Ms. Daniela Morawetz: Well, especially when they call you at 7 in the morning and say, “Will you do it?” So, yes, I do remember saying that. And that's something, certainly, I've always felt. I don't recall ever hearing or seeing anything that someone said, “Well, don't cancel it unless it costs less.”

Mr. Bob Delaney: Okay. So you were unequivocal. You said, “Cancel it. Period.”

Ms. Daniela Morawetz: Yes.

Mr. Bob Delaney: Basically, that lines up with a statement that Mayor Burton made on September 25. He said, "Since all parties promised they would stop the power plant, I'm not sure (the cancellation) could have been done better or cheaper." When we asked him about that comment at the committee, he emphasized that, "Anyone who wishes to criticize the cost of cancelling it would do everybody a favour if they would explain how they would have done it differently." Would you agree with Mayor Burton's statement?

Ms. Daniela Morawetz: Sounds like common sense to me, but yes.

Mr. Bob Delaney: Chair, I will stop there and pick it up in my next—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

Mr. Fedeli, 20 minutes.

Mr. Victor Fedeli: Thank you very much, Ms. Morawetz, for being here. I can tell you, as a former mayor, I always appreciated the opportunity for impassioned pleas and an articulate case to be made by people such as yourself. I congratulate you for that.

Ms. Daniela Morawetz: Thank you.

Mr. Victor Fedeli: I'm going to be very brief before I pass it on to my colleagues. I just want to read you the agenda of why we're here. It's sort of two parts. You definitely satisfy the last part.

"Review of the matter of the Speaker's finding of a prima facie case of privilege, with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates...." That's the first part of why we're here. The second part is, "and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants."

So certainly in your opening comments and in your 20 minutes of testimony, you have talked about the second part. You have introduced, as others have, the California model and you talked about best practices; and those comments are very much appreciated by this committee.

I want to focus for a moment on the first part of this, and this is the case of privilege that we're here to understand about the documents that we don't have, so I have two questions for you, the same two questions I ask of virtually every witness. Do you know how much the Liberal cancellation of the Oakville and the Mississauga gas plant is going to cost the taxpayers?

Ms. Daniela Morawetz: No.

Mr. Victor Fedeli: Okay. Do you know who ordered the documents to be removed?

Ms. Daniela Morawetz: No.

Mr. Victor Fedeli: Okay.

For me, Chair, that's all I have. I will pass it over to my colleagues.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Daniela, for joining us this morning.

In your submission and in some of your answers to the questions from Mr. Delaney, it kind of brings up some of the questions that I might have. You're talking about 2009, which was well into the game, as we say. The decision to site that plant was at least as early as 2005. Prior to 2005—and you've talked about how inappropriate the siting of that plant was, and your organization did many times talk about the inappropriateness of the siting with respect to proximity to homes, schools, also the train track. I know that what was also discussed was the proximity to the QEW and the particular cooling process that was being used, with the ammonia tanks and everything, and the concern that that could cause flash freezing, for example, on the QEW, which could be catastrophic if it happened during a rush hour. So all of those considerations: They were known to the government, they were known to the Ministry of Energy, because we didn't even have the OPA when this was first dealt with.

What kind of community engagement did the government have with you or people in Oakville prior to making that decision? I mean, we're talking about one decision here, the decision to cancel the plant, but what kind of engagement did the government have with the community prior to ever making the decision to put that plant on that location?

Ms. Daniela Morawetz: I have no idea. We didn't exist. I was not—the first I started to hear about the power plant was actually from Mississauga in late 2008, early 2009. At that point, there were four sites identified, three in Mississauga and one in Oakville. As far as what happened in 2005, I don't recall anything.

Mr. John Yakabuski: But you've been a resident?

Ms. Daniela Morawetz: I've been a resident of Oakville actually for most of my life.

Mr. John Yakabuski: So if there was any significant community engagement, would it be fair to conclude that there would have been news stories in the Oakville Beaver or other publications that the government was actively considering this location or had made a decision that they were going to build a plant on this location and that there was a consultation process going on with the community?

0900

Ms. Daniela Morawetz: I would assume someone would have noticed, yes.

Mr. John Yakabuski: You, as a lifelong resident, weren't aware?

Ms. Daniela Morawetz: No, I was not.

Mr. John Yakabuski: That would possibly lead someone to conclude that there was very little consultation going on with the community prior to that decision being made. Would that be fair?

Ms. Daniela Morawetz: Very possibly, or that communication within Oakville in 2005—getting information to the community can be a difficult thing, as we have learned. Thank goodness for electronics and the Internet, because that's changed things dramatically.

Mr. John Yakabuski: Well, technology, it's a kind of a love-hate thing sometimes.

Ms. Daniela Morawetz: If you have to rely on the Oakville Beaver, you don't necessarily get that news.

Mr. John Yakabuski: Sometimes it works and we love it, and sometimes it doesn't work, like this new BlackBerry I'm trying to figure out and then, at least for a couple of days, we hate it. But Rob is helping me understand this new technology.

You did say as well, Daniela, that once he came on board, Kevin Flynn was supportive. Are you suggesting that, initially, he was not on board or resistant to your overtures, or only when it became apparent that this was a threat to his political future in Oakville that he became more actively involved in a supportive way with respect to the cancellation of this plant?

Ms. Daniela Morawetz: That's a difficult question to answer, in some ways. Initially, there is no doubt that, when we first started gathering petitions, we went to Kevin, and he didn't feel, I think, given his position at the time—I'm trying to remember exactly. Again I'm thinking back to 2009; I don't remember exactly what it was. But he had a position within—he thought that there was a bit of a conflict from the position he was holding, at the time, with presenting the petitions.

We ended up taking them to Charles Sousa and he took them in, which was fine with us, because we were working with Mississauga at the time. It was a joint effort. Actually, we didn't have representation. I guess we didn't have Kevin Flynn standing up and presenting our petitions, initially.

But eventually, when the information started to come out and he started to see what we were seeing and basically, almost at the same rate, I think, as we were getting involved, he realized he had to be involved as well and that this was a big issue.

Mr. John Yakabuski: He read the tea leaves, as they say.

Ms. Daniela Morawetz: I think so.

Mr. John Yakabuski: Or felt which way the wind was blowing.

Ms. Daniela Morawetz: Well, doesn't everybody?

Mr. John Yakabuski: I think it would be fair to conclude, then, that if he was less than on board in at least the part of 2009 that you would have spoken to him, then it would likely have been even less the case between 2005 and 2009. So there's four years that transpired when that decision had already been made to build a plant in Oakville on that particular piece of property that Kevin Flynn really did nothing to support the cause.

Ms. Daniela Morawetz: Well, the decision hadn't been made to build in Oakville on that property until whenever they gave TransCanada the contract. There were three sites in Mississauga and one in Oakville. Even the first time I went to a meeting to look at the four sites, I thought, "Well, there's no way they're going to put in on that Oakville site. It's tiny and it's right beside the tracks and it's right near houses. That's just crazy."

I would think he wouldn't necessarily have thought, from an Oakville perspective, that there was all that much to be concerned about, perhaps. I'm not reading his mind. I think there were a lot of residents of Oakville who weren't concerned because I think, initially, perhaps they thought it was more of a Mississauga issue. But it was when we started to look into what was involved in this plant, how big it was—it didn't matter whether it went into Oakville or Mississauga; it was just wrong.

Mr. John Yakabuski: He would have been well aware of the site that had been chosen in 2005. He was also the PA to Energy, so he would have been well aware. If he would have had concerns, he would have had ample opportunity at that point to raise them.

But I appreciate your insight into this matter and I congratulate you on the successful work that you and your organization were able to complete by convincing the government that the decision to go ahead with this would have been very detrimental to the chances of their particular members in that area. Thank you very much.

Ms. Daniela Morawetz: You're welcome.

The Chair (Mr. Shafiq Qaadri): You yield your time?

Mr. John Yakabuski: Yes.

The Chair (Mr. Shafiq Qaadri): Thank you, PC caucus. To the NDP. Mr. Tabuns.

Mr. Peter Tabuns: Ms. Morawetz, thank you very much for being here this morning. You noted earlier that I had spoken out against this plant before the contract was signed. Your community had spoken out against this plant before the contract was signed. Would it be fair to say that the Liberals wilfully signed a contract for a plant at this location ignoring advice from the opposition and the community?

Ms. Daniela Morawetz: Well, I don't know whose name went on the contract, so I'm not in a position—

Mr. Peter Tabuns: A member of the government.

Ms. Daniela Morawetz: —to comment on that, really. I don't know what the process involved is. Often I think—I used to work for Ford for many years before I retired and—

The Chair (Mr. Shafiq Qaadri): That's Ford Canada?

Ms. Daniela Morawetz: Yes.

The Chair (Mr. Shafiq Qaadri): You need to specify that.

Ms. Daniela Morawetz: Yes. Thank you.

Mr. John Yakabuski: You can't say that the Chair's sleeping.

Ms. Daniela Morawetz: I know that large organizations work in strange and wonderful ways sometimes, and often there's a bit of right hand, left hand—you've got different departments, and they aren't always communicating. So I can't say that someone wilfully went ahead and disregarded. I mean, that's what it felt like to the citizens of Oakville, sure.

Mr. Peter Tabuns: Generally speaking, if you're given very sound advice, and you ignore it and you go

forward, one can characterize that as wilfully. But you've given your response, and I'm going to move on.

Were you aware that the Liberal government directed the OPA to abandon all their legal defences when they sent the notice to TransCanada that they weren't proceeding with this plant?

Ms. Daniela Morawetz: No.

Mr. Peter Tabuns: Okay. Do you have knowledge of the wholesale destruction of electronic records by senior Liberal political staff with regard to this matter?

Ms. Daniela Morawetz: No.

Mr. Peter Tabuns: Do you have anything to add to our knowledge about the real cost of the relocation of this plant?

Ms. Daniela Morawetz: No.

Mr. Peter Tabuns: Thank you for your testimony.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Tabuns. Back to the government side, Mr. Delaney.

Mr. Bob Delaney: I notice that my colleague Mr. Yakabuski was talking about his new BlackBerry. I would suggest that you not try to figure out your new BlackBerry on the same weekend you try to unravel Windows 8. Make your life a little easier by tackling them one at a time.

Mr. John Yakabuski: Trust me, I'm not going anywhere near Windows 8 this weekend or probably any other.

The Chair (Mr. Shafiq Qaadri): I'm sure the advice is well taken, Mr. Delaney. You might want to—

Mr. Bob Delaney: In terms of getting back to the topic of the discussion here, just to put something on the record, I think Mr. Yakabuski was confusing some dates with something else in his inference to 2005. It's worth mentioning, Chair, that the Oakville plant was procured by the Ontario Power Authority on September 30, 2009, and was cancelled one year later.

You mentioned earlier, Daniela, that you've been an Oakville resident for a long time. How many years?

Ms. Daniela Morawetz: I went to high school in Oakville, and other than a short stint after university, I've lived there ever since.

Mr. Bob Delaney: There has been a little bit of discussion about my colleague and, I have to say, my friend, Kevin Flynn. You would have known Kevin Flynn when he was a town and a regional councillor?

Ms. Daniela Morawetz: Yes, I—well, I knew of him, yes.

Mr. Bob Delaney: He's had a lot of support in Oakville over the years?

Ms. Daniela Morawetz: He has. He's been very active.

Mr. Bob Delaney: Was Kevin Flynn's seat in any danger in the last election?

Ms. Daniela Morawetz: Not that I—I'm not political. I'm not involved with any political parties or in any position to judge, but from what I could see, I really didn't see why it would have been.

Mr. Bob Delaney: Okay, thank you. Just a few questions to conclude here: In terms of the decision to relocate the Oakville plant, I think we're all aware that the municipality had enacted bylaws to try to stop the construction.

The proponent, TransCanada Energy, had one of its people, a gentleman named Chris Breen, here to testify a few weeks ago. He told the committee about all of the channels that they would have used to deliver on their obligation to build the plant. TransCanada Energy was in fact working very hard to fight the bylaws through various legal proceedings. Mr. Breen testified that they were confident they would eventually get the bylaws overturned either at the Ontario Municipal Board, at the Ontario Supreme Court or Divisional Court. If needed, they were prepared to appeal all of those decisions to ensure the plant got their approvals.

In fact, in his testimony he said, "What I would say is that TransCanada were confident that they were going to eventually get to build the" plant "on the Ford lands, but clearly we had some work to do at the Ontario Municipal Board and the various courts that I had mentioned earlier."

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He also said, "We had a contractual obligation. It was very cleanly spelled out in black and white that that was our responsibility: 'You have to go through every possible channel to deliver on your obligations in this contract.' And we would have done that."

Were you aware of the various channels that TransCanada Energy, the proponent, was going through to overturn the bylaws?

Ms. Daniela Morawetz: Some of them, yes.

Mr. Bob Delaney: Did the residents' association have any concerns or any positions on that?

Ms. Daniela Morawetz: Absolutely. We fully were in support and had been down to town hall to support the interim control bylaw that the town put in place. We asked people to come out to the OMB hearing to show as much support from the community for trying to hold the bylaws that the town had put in place, to keep them from being overturned and to show that there was support in the community for that.

Mr. Bob Delaney: Then clearly, had TransCanada Energy been successful in overturning these bylaws, either at the Ontario Municipal Board or before the courts, the city would have been forced to issue building permits and construction would have begun, which is, in fact, exactly what happened in Mississauga.

Is it fair to say that, if the province had waited until that moment when construction was under way to cancel the plant, costs would have been much higher?

Ms. Daniela Morawetz: It would appear that way to me. I'm, again, not an expert, but I would think that once you put a shovel in the ground, it's going to cost a little bit more.

Mr. Bob Delaney: If I'm going to draw an inference on this, what you're saying is that if somebody is opposed to this, they should be careful of their criticisms

of the government on the cost, because all three parties made the same commitment, and had the province not acted when it did, the cost would have been higher. No matter which of the three parties had formed government after the 2011 election, they would have been looking at the same costs, correct?

Ms. Daniela Morawetz: I'm not the Auditor General, but I would think that that probably makes sense.

Mr. Bob Delaney: Okay. Was there anything else that you wanted to say here today?

Ms. Daniela Morawetz: No. I think that in my statement and in the comments that I made earlier, I've been pretty clear that my interest in coming here was to ask you to focus on the process and to fix the process, because I don't want to be reading that some other community is going through this sort of thing. I don't want to have to move there and help them too. Because I might; I'm retired.

It's a gruelling thing to go through; it's a very emotional thing. The community suffers as a result. It's frightening to think that you have no control and have no input, and I wouldn't like to see someone else feel that way.

Mr. Bob Delaney: Well, I think your statements pretty fairly encapsulate the feelings of many of us in government and, I would venture to say, on all sides.

Our government has asked that this committee provide our recommendations on how to change the siting process as we move forward in building energy infrastructure. You shared your top three, which, if I understand them correctly, are: legislated buffer zones, local involvement early in the process, and stronger environmental protection.

Ms. Daniela Morawetz: Exactly.

Mr. Bob Delaney: Okay. Was there anything else you wanted to add?

Ms. Daniela Morawetz: No.

Mr. Bob Delaney: Then I can assure you that your recommendations are going to be included in our final report, and I want to thank you very much for having taken the time to get out of bed early and fight the traffic—as I did, driving in the same direction—to get down here today.

Ms. Daniela Morawetz: Thank you, Metrolinx, for the GO train.

Mr. Bob Delaney: Thank you very much.

Ms. Daniela Morawetz: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Mr. Yakabuski.

Mr. John Yakabuski: Thank you again, Daniela. I'll just go to one other topic I wanted to touch on. When former Premier McGuinty testified before this committee, he testified that, essentially, the decision to cancel the plant was his. Last week, when Charles Sousa testified before the committee, he as much said the decision was made by Don Guy.

We've got a little confusion there, but the point I really want to get to is that when former Premier McGuinty testified before the committee, he testified that

the decision was made because of the children. He used that term. He said the decision to cancel the plant was made because of the children and all about the points that you talked about, the 400 metres from homes, 320 metres from a school and three other schools within less than a kilometre, no farther than 750 metres.

I'm just wondering—you know, that decision was made in October 2010 to cancel the plant—did those schools and those children exist before that? Were they there five years before? Were those same schools and hospitals and homes all there before that? They didn't get built within a few years of 2010, did they?

Ms. Daniela Morawetz: No, no, they were all there. I don't think the same children were there. I hope not. The education system in Halton is pretty good. But yes, the facilities existed.

Mr. John Yakabuski: I didn't imply the same children. I apologize if it sounds like I'm saying the same children. Even I got through grade 1 in a couple of years, I think. I don't want to speak about grade 3; that was a tough one.

The point I'm making is that the same circumstances existed in 1998, in 2000, in 2002, 2004, 2006, and all of a sudden, in 2010, when we're on the eve of a provincial election, the Premier says he thought about the children. Do you find that a little bit rich?

Ms. Daniela Morawetz: I think it indicates how the process doesn't work properly, that there is not enough consultation early on so that people have a chance to provide input. The fact that we didn't know in any real way earlier what the implications of this plant coming there were—if we'd known more earlier, yes, we probably would have gotten involved earlier, but I guess nobody asked us, so there is a huge problem with the process.

Mr. John Yakabuski: If the government had acted properly from the start, we probably wouldn't be here today because that plant never would have got sited on that location in the first place. Would that be your intention?

Ms. Daniela Morawetz: I would like to think so.

Mr. John Yakabuski: Thank you very much, Daniela. I appreciate your visit here today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To the NDP side: Mr. Tabuns.

Mr. Peter Tabuns: No questions. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns, and thanks to you, Ms. Morawetz, for your presence and your stewardship of the community interest in Oakville. You're respectfully dismissed.

Ms. Daniela Morawetz: Thank you.

The Chair (Mr. Shafiq Qaadri): The committee is essentially going to adjourn. There is just one issue that Mr. Fedeli has raised. He's given us in writing two or three aspects of the latest document dump, I guess, that need to be remedied: a specific page that was apparently redacted by accident, potentially, as well as a missing week from cabinet office. I'm just informing the com-

mittee that we will actually correspond with the relevant folks to remedy this.

With that—

Mr. Victor Fedeli: Do we need a motion on these?

The Chair (Mr. Shafiq Qaadri): No, no.

Mr. Victor Fedeli: May I take one moment to explain?

The Chair (Mr. Shafiq Qaadri): Sure, please.

Mr. Victor Fedeli: In the OPA minutes, we asked to be supplied with all of the Oakville and Mississauga documentation, which we have received, but in going through it, a lot of it is redacted, and that is fine. It's not business pertaining to the cancellations. But on pages 176 and 177, there's an item 11, and it has, "the process review began during and shortly after the second disclosure," and has several steps, colon, and you go to the next page and there's a piece of it redacted. I think it's purely by accident. I would believe that, and so I'm

asking the OPA to provide just that one piece unredacted. That's my first request.

My second request was—in the cabinet documents, cabinet office box 3, all of the cabinet minutes are presented chronologically. However, when you're reading the story, you jump to the next chapter and you wonder: How did we get there? There's a week missing. The September 27 to October 4 week is not in those documents. They may be somewhere else in the 40 boxes that we just received. Nonetheless, I would appreciate receiving just that one to fill out the chronological order.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The committee will invite them to attend to their accident.

The committee is adjourned until Tuesday next week. We're in a different room, so I'd invite you to find out where.

The committee adjourned at 0920.

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Tuesday 4 June 2013

Journal des débats (Hansard)

Mardi 4 juin 2013

Standing Committee on Justice Policy

Members' privileges

Comité permanent de la justice

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 4 June 2013

Mardi 4 juin 2013

The committee met at 0831 in room 151.

MEMBERS' PRIVILEGES

HON. LAUREL BROTEN

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochaine présentatrice, l'honorable Laurel Broten.

Ms. Broten, welcome to the justice policy committee. I invite you to please be sworn in by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Hon. Laurel C. Broten: I do.

Le Président (M. Shafiq Qaadri): Merci, madame Broten. Comme vous le savez, vous avez cinq minutes pour vos remarques introductives. Je vous invite à commencer maintenant.

Hon. Laurel C. Broten: Merci. Good morning, everyone. I'm pleased to be here to answer questions this morning with regard to the knowledge and information I have relevant to the Greenfield South power generation station, which I will refer to as the Mississauga gas plant.

I'm proud to be part of a government that has recognized that a better method for selecting power plant sites must be used in the future.

As Premier McGuinty said at the time, "We take responsibility for not getting this right the first time. And we're currently developing better guidelines on choosing sites."

And as Premier Wynne said during her testimony before this committee, "What I know is that we need a better process, both on the siting of plants and making sure that there is community input and the process is transparent from the beginning...."

On April 12, 2005, the Ontario Power Authority entered into a clean energy supply contract for the Mississauga gas plant. This would have resulted in a 280-megawatt natural gas plant in Mississauga, not far from my riding of Etobicoke-Lakeshore.

As you know, from June 2005 to October 2007, I served as Minister of the Environment. During the time I served as Minister of the Environment, I had no involvement with the Mississauga gas plant.

On July 16, 2008, the then Minister of the Environment, John Gerretsen, denied the requests to elevate the Mississauga gas plant project to an individual environmental assessment.

After that decision, four years passed with no activity on the project until late May 2011, when the city of Mississauga issued a building permit. The fact that the Mississauga gas plant might be constructed after years of dormancy was shocking to my community and was very concerning to me, as their MPP.

In or around June 2011, on behalf of my community, I wrote to the Minister of the Environment and the Minister of Energy, and I requested that the government review Greenfield's environmental assessment, given the change in the makeup of the area of the proposed plants. That's one of the documents that I provided you today.

On June 8, the Minister of the Environment requested that Greenfield provide an updated assessment of its anticipated emissions, and how they would comply with requirements under the Environmental Assessment Act. As the Etobicoke Guardian wrote at the time, "Wilkinson said the ministry decided to review" the proposed plant "after hearing from Etobicoke-Lakeshore MPP Laurel Broten about a new set of condominium towers that now stand on the Etobicoke side near the site." Again, I've provided that to you.

Shortly after Minister Wilkinson's decision to request additional environmental assessments, the city of Mississauga passed a resolution requesting a full review of the plans for the Mississauga gas plant. In addition, city of Toronto councillors Peter Milczyn and Mark Grimes, who represent wards 5 and 6 in my riding of Etobicoke-Lakeshore, tabled a motion with Toronto council requesting a review of the decision.

In June, I also received written concerns from the president and CEO of Trillium Health Centre, Janet Davidson. Again, I've provided you with all of these documents.

As you can hear, my community was expressing significant concerns on the proposed construction of the Mississauga gas plant. I listened to my community and approached this issue like any other issue of concern being expressed by my constituents. I listened, looked for solutions, and advocated on their behalf. As their elected representative and a mother raising a family in the community as well, I shared their concerns, and I took their concerns back to the government.

When the election campaign began in the fall of 2011, the process of environmental review was under way, and I was very hopeful that the review would lead to a positive resolution for my community. After receiving a number of questions and concerns from members of the Etobicoke–Lakeshore community about my position regarding the Mississauga gas plant, I wrote to the residents of my riding reiterating my opposition to the Mississauga plant on September 19, 2011. Again, I've provided that document to you. I responded to their concerns in that regard.

On September 24, 2011, it was announced that a re-elected Ontario Liberal government would find a new location for the proposed power plant. On September 27, I wrote once again to the residents of Etobicoke–Lakeshore to inform them of this announcement, and I've provided a copy of that letter to you.

During the campaign, both opposition parties were opposed to the Mississauga gas plant. I really want to be clear: All parties were in agreement that the Mississauga gas plant should not be built on this site. Every party in the Legislature made the same commitment to Ontario voters.

In fact, Simon Nyilassy, my PC opponent, distributed a campaign flyer that said: "The only party that will stop the Sherway power plant is the Ontario PC Party." Again, I've brought you a copy of that document.

I'm really proud of my track record as MPP for Etobicoke–Lakeshore over the past almost 10 years. I've worked hard to make sure that my riding is a great place to raise a family, go to school, or to work. Just as I have advocated on behalf of my community regarding many projects and investments, I advocated on their behalf regarding the relocation of the Mississauga gas plant.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Broten. I need to intervene there.

Before I open the floor, I'd just like to remind all members of the committee to please observe parliamentary decorum. We have not only a minister of the crown but also a sitting MPP.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you, and welcome, Minister.

Hon. Laurel C. Broten: Thank you.

Mr. Victor Fedeli: I want to open up by reading—almost a year ago, former Finance Minister Dwight Duncan was at the estimates committee, and the member from Timmins–James Bay, Mr. Gilles Bisson, was questioning him at estimates. I guess there's an expression, "If we only knew then what we know now." I think that's really kind of where I want to go.

I want to read this because it's not so much what he said, although what he said was interesting and critical; it was that he was so much more nuanced. We didn't understand what those subtle words meant; we just didn't know. Gilles asked him an innocent question; the minister gives an answer, but it's couched. You'll see this. We didn't recognize—

Hon. Laurel C. Broten: Can you just tell me when this took place?

Mr. Victor Fedeli: July 19, 2012. Estimates.

Hon. Laurel C. Broten: Thanks.

Mr. Victor Fedeli: It was really quite interesting, and the date is important. I was going to tell you the date afterwards. Let me just read it; it'll just take me a couple of minutes to read these. It starts off with Mr. Bisson. I won't name who's going back and forth. It's Mr. Bisson and Mr. Duncan each time; there's nobody else interjecting here.

Mr. Bisson asks Mr. Duncan: "What financial compensation was provided to Eastern Power in order to secure their agreement in 2011 to cease the construction activities at the Mississauga gas plant?" What financial compensation?

The answer was: "The relocation amount of \$180 million." Of course, the answer was, to us, \$180 million. The words "relocation amount" were introduced; we'd never heard that before, and it really didn't mean anything at the time. We now know what that means.

"That's it? No more?"

The answer: "We put out the other \$10 million"—because we now know it went from \$180 million to \$190 million—"because that settlement made it easier to precipitate a settlement on the relocation cost, so one could indirectly say, yes, that that was part of it." Indirectly—we'll talk about that later, because the auditor directly puts that in the costs.

"Do you expect any more money to be spent in order to deal with this little cancellation?" The answer came back in the form of a question: "Cancellation or relocation?" To Gilles, to me, to anybody listening, it would've been the same thing. We didn't understand there was a difference, so Gilles, of course, says, "Relocation ... they're not building it anymore."

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"Not directly for the relocation," was his answer. "The other thing to bear in mind: On the relocation costs, there could be variances ... for instance, positive or negative. Those costs are agreed-to estimates. Oftentimes, there are variances on a project of that order of magnitude: It could come in at \$178 million; it could come in at \$182 million." He's talking about fractional variances here.

The question, then, was: "Is the government, beyond the \$180 million, expecting to have to pay for anything else in order to settle this particular issue with the constructor?" It's a simple question; are there going to be any other costs? His answer: "Not the relocation—" Again, Gilles or anybody on estimates would think that he's answered the question "no," but it's that subtle nuance that he's played: "Not the relocation—"

"What about any penalties?"

"—not that we're aware of," is the answer.

"Penalties in the contract—there was obviously a contract signed between—"

"The relocation costs, as I understand it—and these questions, again, would have to go to energy—the \$180 million covers all of those costs. It covers them all off." Again, he implies that that's everything, except he keeps throwing that word, "relocation," in there.

"So you're not expecting anything else other than minor variances"—that's the \$2 million each way—"over the \$180 million on Mississauga?" A simple question.

The answer: "On relocation, absolutely. Yes." Again, that subtle—he's asked a very simple question. We get an answer; it sounds like there are no more costs, but he threw that word, "relocation," in there.

"Do you expect any additional claims on penalties?"

"No. The \$180 million should cover all of that. That was part of the comprehensive agreement."

So this tells us a couple of things. Again, we certainly wish we would have known then what we know now: that he was very nuanced, but that tells us a very, very important story. He—Minister Duncan—knew what these subtle differences were. We didn't, but what that proves is that the government knew all along that it was more than \$190 million, that there were indeed going to be additional costs. He couched it by masking it, calling it "relocation," knowing we didn't have a clue what he was talking about at the time.

He was chair of treasury board. You sat on treasury board, so I would ask you: What did you know about the costs, and when did you know?

Hon. Laurel C. Broten: Thanks for your question. There's a lot of evidence that you've chosen to put forward that I'm not knowledgeable about—

Mr. Victor Fedeli: I read it directly, though, just so you know—from beginning to end, not selective. I read it non-stop, just so you know, Minister.

Hon. Laurel C. Broten: Okay. There are a number of questions in there, and I'm going to do my best to answer them for you. The first thing is, I do want to make a point that, at the community level, as MPP for Etobicoke-Lakeshore, my commitment to the community was with respect to relocation.

There is a distinction between relocation and cancellation, and I would suggest to you that that was a distinction that your own party made during the time of the election campaign. One of the documents that I provided to you was the flyer that Simon put out during the election campaign. If you can just take a look at it, it has, in big and bold at the top, "It's back. 'Dalton McGuinty, didn't you just cancel a contract in Mississauga?'"

Mr. Victor Fedeli: Minister, I apologize—

Hon. Laurel C. Broten: "—Tim Hudak. Dalton McGuinty says, 'No, we didn't. No, we didn't. No, we didn't.'"

Mr. Victor Fedeli: Minister, I apologize. I'm just talking—

Interjection.

Mr. Victor Fedeli: But she's answering something that I'm not asking her about. I'm talking about her time on treasury board. I'm trying to get to the financial aspect. I'm not interested in the riding side; I'm sure maybe some of my—

Hon. Laurel C. Broten: But you're making an assertion, Mr. Fedeli, that—

Mr. Victor Fedeli: It has nothing to do with the riding activity.

Hon. Laurel C. Broten:—"relocation" and "cancellation" are terms that people didn't understand the difference between, and I'm suggesting to you that there was broad knowledge that it was very different. Your party tried to accuse the Premier of backing away from our commitment to relocate the gas plant when he wouldn't use the language, "We would cancel it," and that's because, with respect to relocation, you continue with the energy supply contract and there's a view that that would be a less expensive route than the route Mr. Hudak was proposing, which was outright cancellation. I do want to make that statement because I think, at the community level and with respect to costing, those were different things.

As you said correctly, I sat on treasury board at the time. I think that you do have all of the treasury board minutes from in and around that period of time and you would know that at the May 17 treasury board meeting, when a negotiation mandate for the settlement with EIG came forward, I withdrew from treasury board for that meeting, so I had no knowledge with respect to the ongoing negotiations. And I did that because, as the MPP for the community, I had advocated on behalf of the relocation. It had been important work that I had done for my community. I didn't think that I would come to that discussion with an open mind, and so I withdrew from the conversation. So in and around July 2012, I would have had very little knowledge with respect to the ongoing conversations.

I did know by August 15, 2012, when cabinet received the report back from treasury board approving the \$190 million and the resolution—I was participating in that conversation, but I wasn't party to discussions about what costs might be. I had withdrawn.

Mr. Victor Fedeli: So let's talk about that date, when the \$190 million was brought to cabinet. You were there.

Hon. Laurel C. Broten: August 15, 2012? Is that the date you're referring to?

Mr. Victor Fedeli: You're the one who gave us that date. Is that the first time that you would have acknowledged revisiting the committee—or the move, the cancellation? This is the first time you re-engaged in this—

Hon. Laurel C. Broten: I'll tell you, I do not have a specific recollection of that conversation at a cabinet meeting on August 15, 2012, but in preparing to attend today, I did review meetings that I participated in and I know that cabinet received a report back on the treasury board order approving \$190 million that day and that I was in attendance. If you think back to August 2012, you might recall that I was very preoccupied with the files that I had responsibility for at that time.

Mr. Victor Fedeli: What other costs were discussed, other than the \$190 million?

Hon. Laurel C. Broten: As I said, I have no specific recollection of the conversation at that meeting. I can tell you, in preparing for today, I know that there was a report back from treasury board approving \$190 million, and it is only by informing myself in preparation for today's committee that I'm aware of that knowledge at present.

Mr. Victor Fedeli: Do you remember any discussion whatsoever—you were in the room. Do you remember anything at all? Did you take notes, your personal notes, at that meeting at all?

Hon. Laurel C. Broten: As I've said, August 15, 2012, I was Minister of Education at the time. I was very engaged in my file responsibilities at the end of August, a critical time in this province with respect to education. I have no specific recollection of the conversation about Greenfield South, but I'm informing you because I informed myself about that meeting in anticipation of today.

Mr. Victor Fedeli: All right. So you're not going to tell us anything about Mississauga because you can't remember. Why don't we talk about Oakville, then? Do you remember much about Oakville?

Hon. Laurel C. Broten: I think that your premise that I don't remember anything about Mississauga is unfair. I've participated here today. I've provided you with a number of documents and I've relayed to you the information that I have with respect to how the cancellation came about, the conversations that took place in the community and the work that I did as MPP to ensure that my community's voice was heard. I brought you the documents that I have in my file.

Mr. Victor Fedeli: So if you can't remember anything about Mississauga from the August 15 meeting, why don't we talk about Oakville? Take us back to the beginning. As a cabinet minister, when did you first learn that the government was considering cancelling the gas plant in Oakville?

Hon. Laurel C. Broten: I really had no involvement with respect to Oakville. To the best of my recollection, I would have heard about the Oakville cancellation in the media.

Mr. Victor Fedeli: It wasn't discussed at cabinet?

Hon. Laurel C. Broten: I'm giving you my best answer. My best recollection is that I was informed about that cancellation in the media.

Mr. Victor Fedeli: You heard about the cancellation of the Oakville power plant in the media? That's your first time—

Hon. Laurel C. Broten: What's the time frame? Can you assist me on what is the time frame that that would have been made public?

0850

Mr. Victor Fedeli: Does anybody remember the precise date of the announcement of Oakville?

Mr. Peter Tabuns: September 30, 2009.

Mr. Victor Fedeli: Yes, I'm thinking—

Mr. Peter Tabuns: Within and around there.

Interjection.

Mr. Victor Fedeli: October 7? October 7, 2010.

Mr. Peter Tabuns: Oh, of the cancellation.

Mr. Victor Fedeli: Yes, the announcement of the cancellation. October 7, 2010—about a year before the provincial election.

You first heard of the Oakville cancellation in the media?

Hon. Laurel C. Broten: Yes, that's my best recollection.

Mr. Victor Fedeli: It wasn't discussed at cabinet?

Hon. Laurel C. Broten: I can tell you, in 2010, I would have been serving as Minister of Children and Youth Services, I believe, at the time. I would have been engaged in my own files and own subject area. I was not a member of treasury board, and my best recollection is that I was informed about the cancellation of the Oakville plant in the media. The Oakville plant was not directly relevant to my constituents. It was not a topic of conversation in my community.

Mr. Victor Fedeli: The minister or the Premier did not bring it to cabinet's attention?

Hon. Laurel C. Broten: I've answered the question the best that I can. The knowledge that I have, the best recollection about when I heard about the Oakville cancellation, is through the media and through an announcement that was made.

Mr. Victor Fedeli: That's fair. If you learned the Oakville cancellation from the media, when exactly was the cancellation first discussed subsequent to the decision being made?

Hon. Laurel C. Broten: I have to tell you that, as I prepared for today, and you can sense with my opening statement, I indicated that I was pleased to come here to talk about the Mississauga power plant. That's not to be someone who doesn't answer your questions, Mr. Fedeli, but in my involvement as an MPP, as a cabinet minister, the Mississauga gas plant was a much more relevant issue to me and my community. I had involvement with it. I think I have pertinent information to provide to this committee.

With respect to Oakville, as I've previously answered, the knowledge and information I have come from the media, and I really have had no other involvement with respect to Oakville and have no knowledge to assist the committee with.

Mr. Victor Fedeli: But you were a cabinet minister in former Premier McGuinty's cabinet. Are you saying they never talked about the Oakville cancellation in cabinet? The Premier didn't bring it up? This is quite a major financial commitment of the province of Ontario, the Liberal government. This was not discussed? You don't remember any discussions at all about Oakville in cabinet?

Hon. Laurel C. Broten: As I've indicated, I have no recollection specifically with respect to conversations around Oakville. I did not sit at treasury board at the time. I would have been engaged in the files that I had responsibility for as Minister of Children and Youth Services, as the minister responsible for women's issues.

Mr. Victor Fedeli: Premier Wynne testified that her involvement with the Oakville cancellation began in July 2011, when she signed the cabinet minute authorizing the government to enter into arbitration with TransCanada. Are you saying that the Oakville cancellation wasn't discussed at cabinet in those nine months between the announcement in October and her signing the cabinet minute in July 2011?

Hon. Laurel C. Broten: What I'm saying to you is, I have no specific recollection of that conversation, and I was not one who signed that order in July 2011.

Mr. Victor Fedeli: Do you not think it was discussed at that point?

Hon. Laurel C. Broten: As I've said, I have no specific recollection. You may have notes and minutes of meetings, and you would have that information before you. If I were to review those, I guess I would have confirmation of what took place in terms of cabinet minutes, but I'm giving you the best information that I have in terms of my specific recollection.

The Mississauga gas plant I had specific involvement with as an advocate in my community, seeking to find a solution. I was working with Minister Wilkinson to identify to him why it was different now in my community than it had been previously.

With respect to the Oakville gas plant, I was aware of what had transpired through the media. I knew that it was an issue for my colleague Kevin Flynn and that it was relevant to him, but I have no specific recollection and was not involved, to the best of my knowledge, in participating in discussions.

Mr. Victor Fedeli: Minister Bentley said that the total cost of the Oakville cancellation was \$40 million. His quote was something along the lines of: "Over the next months and years, you're going to hear a lot of numbers thrown around, but let me tell you the total cost was \$40 million."

When did you first hear that there would be additional costs for the Oakville cancellation, over and above the \$40 million?

Hon. Laurel C. Broten: As I have previously indicated, Minister Bentley would have been the line minister responsible. He would have had the most direct knowledge with respect to the costing. He would have been receiving advice and information from his ministry, from the public service, from the OPA, and I would have relied on him in terms of information that he would have provided to cabinet. I'm not sure what date you're referring to that he was talking about with respect to that time frame in and around the \$40 million.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: When did you first learn, then, that it was more than \$40 million? You're still a member of cabinet. Cabinet regularly meets. This is a hot topic. When did you learn that \$40 million was only the sunk costs and that there are additional costs, as we learned with Mississauga? When did you learn that there were additional costs for the Oakville cancellation?

Hon. Laurel C. Broten: When did Minister Bentley indicate that he advised cabinet of that information?

Mr. Victor Fedeli: Well, he sticks with the \$40 million.

Hon. Laurel C. Broten: I'm asking you, what is the time frame that Minister Bentley indicated when he informed cabinet? Because if that transpired, that's when I would have received that information.

Mr. Victor Fedeli: When did you learn that it was more than \$40 million? That's what I'm asking. He's gone from there now.

Hon. Laurel C. Broten: Again, I can tell you that in and around the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

To the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Minister, for being here this morning.

Hon. Laurel C. Broten: My pleasure.

Mr. Taras Natyshak: When were you told that the Mississauga gas plant would be cancelled?

Hon. Laurel C. Broten: Again, I think it's important for this committee to recognize that our commitment, as a government, was that we would relocate the plant and that there is a distinction in terms of the language that we used with respect to relocation.

Mr. Taras Natyshak: So when were you told that you would relocate the plant?

Hon. Laurel C. Broten: In my chronology, you can recall that I said that we made an announcement on—September 24, I believe, is the date. I would have been informed the day before, I suspect.

Mr. Taras Natyshak: So on the 23rd.

Hon. Laurel C. Broten: Obviously, during an election campaign the days meld together somewhat. Obviously, I participated in the announcement. I would have been informed the day before.

Mr. Taras Natyshak: You're insistent that this entire process has been a relocation. There are no aspects of it that were ever cancelled? There was no cancellation at all within Mississauga? No clauses got cancelled?

Hon. Laurel C. Broten: I can tell you that my commitment to the community, as the MPP for Etobicoke-Lakeshore—was that my community did not want, nor did I want, a gas plant at that site.

As I indicated in my opening remarks, the issue sat very quiet and dormant for many years. Approvals might have been in place, but there was nothing happening on the site. Suddenly, on May 2011, a building permit was issued. My community and I were quite surprised that this was going to surface, and concern arose.

In and around that time, I wrote to Minister Duguid and Minister Wilkinson, and I raised the issue that, given that approvals were based on such historical information—this process started many, many years before—there was now the Dorothy Ley Hospice right beside there, extensive renewal of the Trillium Health Centre, and two large condominiums that were built.

Mr. Taras Natyshak: In hindsight, it didn't make any sense to site them there in the first place.

My next question is—

Hon. Laurel C. Broten: Well, I don't want you to put words in my mouth with respect to the approvals.

Mr. Taras Natyshak: I'm summarizing what you're saying and what we've heard as testimony before.

The Chair (Mr. Shafiq Qaadri): Mr. Natyshak—

Hon. Laurel C. Broten: No, but I think it's important—

Mr. Taras Natyshak: My apologies, Minister. I have to move on to my next question. I have to get through this series of questions in a short period of time, so I'm going to move you along.

Who called you with respect to the announcement? Which senior staffers during the campaign or campaign staff informed you on September 23 about that decision? Specific names would help.

0900

Hon. Laurel C. Broten: Sure. To the best of my recollection, the call came from Rod McDonald. You might know that Rod was our caucus relations person. Rod is an individual who regularly touched base with MPPs with respect to issues in their community. Certainly this was an issue in my community. I was advocating on behalf of my community—had been doing so since the beginning of June, when this surfaced again.

Mr. Taras Natyshak: Anyone else?

Hon. Laurel C. Broten: The call was from Rod McDonald, and I believe that Dave Gene was with him or participated in that call—

Mr. Taras Natyshak: Did you speak to them?

Hon. Laurel C. Broten: No, I spoke to Rod.

Mr. Taras Natyshak: Just Rod?

Hon. Laurel C. Broten: Yes.

Mr. Taras Natyshak: Okay.

Hon. Laurel C. Broten: A very brief call.

Mr. Taras Natyshak: Did they tell you when you as a candidate should make that announcement during your own individual campaign?

Hon. Laurel C. Broten: Obviously it was a coordinated announcement. This Mississauga gas plant was not in my community. You'll recall it was in the riding now represented by Ms. Damerla.

Mr. Taras Natyshak: So Rod would have told you when he anticipated you being able to make that announcement?

Hon. Laurel C. Broten: My best recollection is that I was informed that we would be in a position to make an announcement on the Saturday morning and that I would participate—

Mr. Taras Natyshak: Saturday would have been the 24th, the following day?

Hon. Laurel C. Broten: The Saturday was the 24th, yes.

Mr. Taras Natyshak: And was that organized through Rod? Was he the central director of that specific announcement? Everything was coordinated around Rod?

Hon. Laurel C. Broten: I don't have any specific information as to who controlled the announcement—

Mr. Taras Natyshak: But he was your—he was who you would touch base—

Hon. Laurel C. Broten: Despite my type-A personality, I make an effort during an election campaign not to run my own campaign and not to manage that type of issue. If I was told, "You're going to be in a position to make an announcement," I attended with my remarks to

respond to the concerns from my community at the time, and someone else had organized a venue and a space.

Mr. Taras Natyshak: Okay. So, again to summarize, as a candidate you're not making those types of decisions. You're listening to central—

Hon. Laurel C. Broten: Exactly.

Mr. Taras Natyshak: —central office?

Hon. Laurel C. Broten: No, no. What I'm saying is, in any—I think any candidate—and I know that you've been one, Mr. Natyshak. You are canvassing. You're going to various places. You have a campaign manager. I had a conversation with Rod McDonald. I was pleased that we would be able to make a clear commitment with respect to the relocation of the plant. I attended on the Saturday morning. Mr. Sousa was there; Ms. Cansfield, Ms. Damerla, myself. Mr. Delaney I don't believe was there. It was really those ridings where it had been an issue and those of us who had participated in public meetings. You might know that there had been public meetings in the community organized by a group called CHIP, and your candidate was Ms. Dionne Coley. She was active at those meetings and said that if she was elected, she would not have the gas plant built there—

Mr. Taras Natyshak: Thank you. My next question: Were you briefed on the costs prior to that announcement? I'm certain they would have given you some speaking notes about the terms of the relocation. Did you ask for any clarification on what the anticipated cost would have been?

Hon. Laurel C. Broten: The commitment that we made on September 24 was that, if re-elected, the Ontario Liberal government would find a new location for the proposed power plant, and that it not be located in Etobicoke and Mississauga and that it not be located close to schools, hospitals and homes. That is what I informed my community of by way of a letter of September 27. That's the announcement that I made—

Mr. Taras Natyshak: When pressed by the media about what the anticipated cost would have been, do you recall what your answer would have been?

Hon. Laurel C. Broten: Obviously we were making a commitment that if we were re-elected, we would pursue a certain strategy. We would seek relocation. The costs would have been required to be negotiated—

Mr. Taras Natyshak: To be determined.

Hon. Laurel C. Broten: —with Eastern Power at the time. I think it's really important—I know we are many years past, but I think it's really important for the committee to understand that this commitment that this gas plant should not be located behind Trillium Health Centre, behind Dorothy Ley Hospice and at that site was shared by every single individual who was seeking elected office in the community of Etobicoke-Lakeshore—

Mr. Taras Natyshak: I'd like to touch on that. I appreciate you bringing that back up because, just prior to this line of questioning, you'd mentioned that you were taking your directives from central office.

Hon. Laurel C. Broten: Don't put words in my mouth. I was not taking my directives from central office—

Mr. Taras Natyshak: You made it easier—it made it easier, on a campaign—

Hon. Laurel C. Broten: No. Listen—

Mr. Taras Natyshak: —to listen to your campaign manager—

Hon. Laurel C. Broten: As to where I should attend on a Saturday morning to make an announcement.

Mr. Taras Natyshak: But also as to what the announcements were coming—where they were coming from and who was issuing those directives. I mean, as a candidate, were you making policy on the fly? Did you expect that other candidates during that election campaign were also creating policy? Or would you agree that policy comes from central office, central campaign and campaign directors? Which one is it?

Hon. Laurel C. Broten: First of all, I was advocating on behalf of my community, and had been doing so for many months. I had been very, very clear—and I think I've provided you with correspondence that I wrote to my colleague ministers, correspondence that I wrote to my community—that this gas plant should not be located there in the present terms—

Mr. Taras Natyshak: Do candidates make policy or do campaign chiefs and campaign directors make policy?

Hon. Laurel C. Broten: I know what you're trying to get at, Mr. Natyshak.

Mr. Taras Natyshak: I would like to know.

Hon. Laurel C. Broten: You're trying to indicate that Ms. Coley did not make a commitment that the gas plant would not be there. That statement is entirely inaccurate. She did make that commitment. She participated at—

Mr. Taras Natyshak: She said that it shouldn't be there, should never have been located there in the first place.

Hon. Laurel C. Broten: She said that—no, I think that's what you want to say, or you're hopeful that she said. But she was campaigning door to door—

Mr. Taras Natyshak: I don't know what she said; I wasn't monitoring her. I'll take—

Hon. Laurel C. Broten: —in the community of Etobicoke-Lakeshore, she participated in meetings and she was very clear that the NDP would not allow that gas plant to be there. She was not being as specific in terms of splicing words as you or Ms. Horwath have since that time.

Mr. Taras Natyshak: I'll take you at your word; Minister, I will take you at your word.

Hon. Laurel C. Broten: But it was also not as relevant because my opponent in my riding is the Progressive Conservative Party.

Mr. Taras Natyshak: I will take you at your word, Minister. You were following her—she was your opponent—and I never monitored her, so I don't know what she said. But I do—

Hon. Laurel C. Broten: I think there are media reports of what she said, though.

Mr. Taras Natyshak: I do know as a candidate that I didn't make policy—

Hon. Laurel C. Broten: I would encourage you to inform yourself because I do think she made statements to the media, but I don't have those with me. But—

Mr. Taras Natyshak: Okay. Well, I would encourage you then to review statements made by Andrea Horwath during the campaign that categorically stated that we could not make a commitment to cancel a gas plant without fully knowing the costs.

Hon. Laurel C. Broten: Well, then Ms. Coley was not being accurate—

Mr. Taras Natyshak: And that has been acknowledged by the Premier, Ms. Wynne, who sat here and said, "Well, I understand that that was Andrea's position."

Hon. Laurel C. Broten: I don't understand that that was Andrea's position.

Mr. Taras Natyshak: I would encourage you to review that historical reference as well.

Hon. Laurel C. Broten: I would equally encourage you to inform yourself—

Mr. Taras Natyshak: I'll move on to my next question.

Hon. Laurel C. Broten: —as to what Ms. Coley said to the community.

Mr. Taras Natyshak: Minister, you were—

The Chair (Mr. Shafiq Qaadri): Colleagues, this is descending to the level of sitcom. Could we please observe parliamentary privilege?

Mr. Taras Natyshak: I take offence to "sitcoms"; they are wonderful, dramatic pieces.

Hon. Laurel C. Broten: Especially if they're filmed in Etobicoke-Lakeshore.

Mr. Taras Natyshak: They're informative. Seinfeld is a great show. Please.

Hon. Laurel C. Broten: Yes, Mr. Natyshak.

The Chair (Mr. Shafiq Qaadri): Time and place, Mr. Natyshak; time and place.

Mr. Taras Natyshak: I'm moving on. I want to move to environmental approvals.

Hon. Laurel C. Broten: Sure.

Mr. Taras Natyshak: You were the Minister of the Environment from June 29, 2005, to October 30, 2007. When you were the Minister of the Environment, was your ministry asked to perform an individual environmental assessment? And by whom were you asked?

Hon. Laurel C. Broten: I think it's important for me to give a little bit of an explanation of that process.

Mr. Taras Natyshak: At the beginning, were you asked?

Hon. Laurel C. Broten: I know Mr. Tabuns was my critic at the time and I know that he would know this. How decision packages and how processes within ministries work is that the minister is the ultimate decision-maker on whether something would get bumped-up for an individual EA. That is the decision that Minister Gerretsen made in 2008, that he denied the bump up to an individual EA. As you are the decision-maker and sit

as the decision-maker, it's critically important for a minister in that role not to fetter their discretion, not to inform themselves about anything before the entire decision-making package comes forward—

Mr. Taras Natyshak: Do you recall the medical officer of health of Toronto requesting—?

Hon. Laurel C. Broten: Can I finish? Can I please finish?

Mr. Taras Natyshak: Well, I'm not getting an answer, yes or no.

Hon. Laurel C. Broten: What I'm telling you is that no decision package would have come forward in the ministry until such time as the OMB process had concluded. That did not conclude until during the election campaign and after the next election campaign—in fact, the appeal period for the OMB decision was about the 29th, I think, when we were first informed that the city of Mississauga would not appeal that decision.

Mr. Taras Natyshak: Did you receive a request from the medical officer of health from the city of Toronto to bump up the EA on the Mississauga project?

Hon. Laurel C. Broten: So, as I'm indicating to you, all of those requests would have been held; answers would have been provided—

Mr. Taras Natyshak: For how long?

Hon. Laurel C. Broten: —by the Ministry of the Environment within the bureaucracy until such time as the decision package could be complete and a minister could analyze whether or not an individual EA would be granted.

0910

Mr. Taras Natyshak: How long did that process—

Hon. Laurel C. Broten: That did not take place until—

Mr. Taras Natyshak: Until Mr. Gerretsen took over?

Hon. Laurel C. Broten: —October 29 or 30, in and around that period of time. That is when, to the best of my knowledge, the appeal period for the OMB decision concluded.

Mr. Taras Natyshak: The request went in January 23, 2006.

Hon. Laurel C. Broten: During the time that I was Minister of the Environment, there was no decision package that came forward. Minister Gerretsen made that decision in July—I believe it was not until July 16, 2008.

Mr. Taras Natyshak: Minister, did you receive a request from the city of Toronto? You did, to bump it up—

Hon. Laurel C. Broten: So, as I indicated to you—

Mr. Taras Natyshak: —and no decision was made until 2009?

Hon. Laurel C. Broten: In 2008.

Mr. Taras Natyshak: In 2008, under Minister Gerretsen?

Hon. Laurel C. Broten: That's right, and that's because the process is such that a package needs to be complete before it comes up for decision. There was a lengthy challenge before the OMB.

Mr. Taras Natyshak: So despite—

Hon. Laurel C. Broten: No decision came in on the OMB until October 4, 2007.

Mr. Taras Natyshak: Okay. Fair enough.

Hon. Laurel C. Broten: And the appeal period lasted until almost the end of that month.

Mr. Taras Natyshak: Fair enough. Despite the challenges at the OMB, despite the request to intervene through the ministry, your government decided to take the approach to negate all of those, I guess, legislative channels and legal channels and to enter into negotiations, regardless of what processes were being undertaken. So the OMB process was negated in respect to what the government was doing through the back side, attempting to negotiate or making the decision to eventually negotiate.

You were presented, or cabinet was presented, with options—legal options, legislative options—and negotiated settlements. Were you aware that the decision had been made to, you know, forgo those legal and legislative options and take on the position to negotiate, also under the context of keeping these entities whole and ensuring that as the process rolled out, the government would be cognizant in keeping those companies whole? Were you aware that that was the final decision, and did that play any part in blocking the EA process? Because eventually you knew or there were signals that you were going to go into a negotiated settlement.

Hon. Laurel C. Broten: I think you're very confused as to what transpired, so I'm going to just go back and try to assist you.

Obviously, the approvals came forward many years before, and that process continued because the city of Mississauga did have that land zoned appropriately. It was acceptable under that zoning that a power plant be constructed there. That being said, it was very, very quiet for many years. I think, to the best of my knowledge, that was because what we were hearing in the community was that Eastern Power or Greenfield, the entity, did not have financing. So then May 2011, apparently they secure financing—it's not something that I'm knowledgeable about, but that must have been what happened—the city issues a building permit under their circumstance, and then we are suddenly, "Okay, what is taking place?"

While that all happened, yes, there were processes that were proceeding before the Ministry of the Environment. Those issues were sitting in the Ministry of the Environment; correspondence was going out from the ministry saying, "The minister hasn't decided. We know that you've asked for an individual EA." I did not see that correspondence, as I said. You do not review files that are not complete and not ready for your decision.

Mr. Taras Natyshak: Were you responsive—

Hon. Laurel C. Broten: Minister Gerretsen did make a decision in July 2008 that he would deny the bump-up, and I think that is public correspondence. I have a copy of that. I could give that to you.

Mr. Taras Natyshak: Okay. Is that because he knew that you were already engaged in proceedings to enter into negotiations?

Hon. Laurel C. Broten: You'd have to ask Minister Gerretsen—

Mr. Taras Natyshak: I'd like to.

Hon. Laurel C. Broten: —but I have his complete decision here.

Mr. Taras Natyshak: Were you responsive to—

Hon. Laurel C. Broten: And I think it's important, though—

Mr. Taras Natyshak: Minister, thank you. I appreciate your clarification.

Hon. Laurel C. Broten: I mean, he's the Minister of the Environment, and he made that decision with respect to the individual EA.

Mr. Taras Natyshak: I appreciate your clarification. I'm going to move on to the next question.

Hon. Laurel C. Broten: Sure.

Mr. Taras Natyshak: Were you responsive to individual community members, as the Minister of the Environment, on their concerns, prior to the election?

Hon. Laurel C. Broten: You know that when you are sitting in a ministerial role, you have to be concerned about taking that work into your constituency office, so while I was Minister of the Environment, I did not participate in conversations with my community with respect to the individual EA bump-up request—

Mr. Taras Natyshak: No, but just about their concerns about the location and the siting of it.

Hon. Laurel C. Broten: No. I think it's really critical, when you're the Minister of the Environment and you're making the decisions about whether you would allow a bump-up of an individual EA—you have responsibility to make that decision based on the documentation that the Ministry of the Environment prepares for you as a decision-making package. You are essentially sitting in a judicious capacity making that decision.

Mr. Taras Natyshak: That would explain the fact that prior to being elected, the now finance minister, Charles Sousa, wrote a letter to his constituents that stated that prior to being elected, he requested a full environmental assessment, an EA, on the site, given the close proximity to homes, the railway line, the Etobicoke Creek and the hospital. So he would have written to you, as minister, and now you're explaining to me that your, I guess, deep involvement in the file would have prohibited you from answering citizens like the now Minister Sousa.

Hon. Laurel C. Broten: I have no specific recollection of a letter from Mr. Sousa, but neither would I have been responsible for the management of the correspondence in the Ministry of the Environment.

The other correspondence that I am aware of was responded to by individuals within the ministry on my behalf, as minister, indicating I had not made a decision and that a decision would be forthcoming. As you know from the history, that decision was not forthcoming until Minister Gerretsen, because the decision package would not have been complete during the time that I was Minister of the Environment.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Taras Natyshak: Ultimately, we're finding out that there were other pathways to cancellation that didn't involve relocation, that didn't involve negotiated settlements, that came before you, as minister, in different capacities. Regardless of the timeline, had they been acted on, in retrospect, it would and could have saved us a lot of money.

Hon. Laurel C. Broten: You have to give me specifics with respect to that because—

Mr. Taras Natyshak: Well, the EA process—

Hon. Laurel C. Broten: But the EA process—

Mr. Taras Natyshak: The contention at the OMB—

Hon. Laurel C. Broten: Minister Gerretsen made a decision. As you know, what I—

Mr. Taras Natyshak: In hindsight, that certainly would have saved us more money. It could have saved us an entire boatload of money in fulfilling the process rather than taking the approach to a negotiated settlement.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak, Ms. Broten. I'll have to intervene there. Apologies for offending your sense of genre there, Mr. Natyshak.

Mr. Del Duca?

Mr. Steven Del Duca: Good morning, Minister.

Hon. Laurel C. Broten: Good morning.

Mr. Steven Del Duca: Thank you very much for joining us today.

Hon. Laurel C. Broten: My pleasure.

Mr. Steven Del Duca: I want to start by asking, when you were invited to testify here before our committee today, was that the first invitation that you received?

Hon. Laurel C. Broten: Yes, it was—on Thursday of last week. And is today not Tuesday?

Mr. Steven Del Duca: I think it is Tuesday.

Hon. Laurel C. Broten: It was a quick turnaround.

Mr. Steven Del Duca: It was a very quick turnaround.

As I'm sure you know, you're not the first member of the government to appear before this committee at first invitation—including Premier Wynne, former Premier McGuinty, Minister Duguid, Minister Chiarelli, former Minister Bentley. What do you think that says about our government's approach to this particular file? Would you think that says we're being open and transparent?

Hon. Laurel C. Broten: I know, from my perspective, it meant for me, when I was asked to participate last Thursday and come today—I wanted to come because I want to give the best knowledge and information that I have about the Mississauga gas plant to this committee. It obviously involved refreshing my memory with respect to these issues, which are now long past in some instances.

I know that all of my colleagues and myself, Premier Wynne included, are making our best efforts to come to answer questions so that the public can have the information that they require and need, and so that the opposition is in a position to get the information they're seeking with respect to the relocation of, in my instance—directly

relevant to my community—the Mississauga gas plant, because it was important to the community.

It was an extensive topic of conversation during the election campaign, by all three parties, who heard from individuals in our community that they were very concerned about a gas plant being located on a site which could not have, at the time, under our new rules, even allowed one wind turbine to be on that site, with respect to setbacks. But historic rules with respect to gas plants were allowing that gas plant to be there, and it caused me concern as the MPP; it caused me concern as a mother raising children in that community.

Mr. Steven Del Duca: I think you would know, as well, that our government has taken several steps, as I said earlier, to be as open and as transparent as possible with respect to these two relocations. In fact, it was a government motion that significantly expanded the scope of this committee to deal not just with the matter of privilege but also the broader issues regarding siting and relocation of gas plants generally.

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I think you might also know that government members on this committee have voted in favour of numerous document production motions, and this committee has received around 130,000 documents from the government so far, including 30,000 documents from the Premier's office.

Given this context, given this openness, what do you think about allegations that the opposition have put forward regarding—that this has been some sort of cover-up, or there is some sort of cover-up?

Hon. Laurel C. Broten: I think that all individuals who are privileged to serve in elected office, whether opposition members serving as MPPs and critics, or government members serving as MPPs and cabinet ministers or parliamentary assistants, all come here to represent our community, to advocate on behalf of our community and to make things better for the people that we represent.

Certainly in the almost 10 years that I've been elected, I'm really proud of the track record that I have in Etobicoke–Lakeshore. We've seen investments in Humber College, in Trillium Health Centre, in the Dorothy Ley Hospice and in new schools. The film and television industry is succeeding in Etobicoke because of our tax credits. All of those things are part of the role of an MPP.

I come here today to talk about the role that I had as a member of provincial Parliament in advocating for my community, this time not with respect to something that the community desired but something that the community did not desire, and to advocate on their behalf and to bring their concerns to my government. That's what I did, and that is something that I know all MPPs know, at its heart, is the role of an MPP: to advocate on behalf of your community.

Mr. Steven Del Duca: On that point, advocating on behalf of your community, I know that both in your opening statement and in response to some of the questions from folks on the other side, you've talked a fair bit

about that. Could you perhaps go into a little bit more detail, or elaborate, with respect to the reasons for your opposition to the siting of the Mississauga plant, and specifically describe a little bit more the interactions you had with local residents, community groups, municipal council and those who were opposed to the plant?

Hon. Laurel C. Broten: Sure. As I said, it kind of took us all by surprise, at the end of May 2011, that a building permit was issued by the city of Mississauga. In and around June 10, 2011, I wrote to Ministers Wilkinson and Duguid. I did so after I tried to analyze—"Okay, what's happening here? Why is this taking place?"—and digested the concerns and looked for a solution.

What I raised with them was that although consultations had taken place and were part of the environmental assessment process, there had not been any consultations for many, many years at that point in time. By 2011, basically, the documents would have been put forward with respect to an environmental assessment many years before.

During that time, we had seen many new residents move into the community. In fact, we had had two new large towers, which actually are across the street from my constituency office right on Evans, called the Sherway towers. They had been constructed, and individuals in those towers were not aware that there was going to be a gas plant essentially behind the Trillium Health Centre on the Mississauga side. That's the issue that I raised with my colleagues.

You'll know that in some of the documents that I've provided, Minister Wilkinson said he would review, after hearing from me about the new condominiums, and that he would take an opportunity to see—you know, things had really changed, as the fact that we have living in buildings and they're quite a bit taller than anything that was there before. That was a critical part of the evidence that I brought forward to indicate that we needed to have another look at the circumstance here.

Mr. Steven Del Duca: Right. Thank you for that. I'm sure—in fact, I'm quite sure—that by now you've heard some of the critics, particularly on the other side, allege that the Mississauga plant was cancelled, essentially, in order to save the seats of some local Liberal MPPs, including yours. So let me ask, especially if you're going to compare various margins of victory that you've had over the years: Do you think your seat was at risk prior to the Liberal Party making its commitment? Do you think your seat needed saving?

Hon. Laurel C. Broten: I take every election campaign seriously, but I have to say I was really proud of the success that I had in the last election campaign. If I look at my results from the various campaigns, my plurality in 2003 was 5,126 votes; I received 44.16% of the vote. In 2007, plurality was 6,736, and I received 45.99% of the vote. In 2011, my plurality was 9,464, and I received 51.02% of the vote. I worked hard for my community. I advocated on their behalf on this and many issues. This was something that was of concern to my constituents. I advocated on their behalf. I did look back

to remind myself of the volume of correspondence that I had received on this issue: about 50 letters. People were concerned, and I was concerned. I was advocating, but with a plurality of 9,464 votes and 50 letters, this was not an issue that was going to cause me to lose my seat.

But was it an issue that was of concern of my constituents? Absolutely. Do I take it as my responsibility to advocate on their behalf? For sure.

Mr. Steven Del Duca: Terrific. So, based on all of that, it's pretty clear that by the time the 2011 election rolled around, the residents in your community were pretty clear that they understood where you stood on this particular issue, because you'd been such a strong advocate for them on this particular issue.

I believe that you already tabled a document from your local PC opponent, Mr. Nyilassy. Forgive me if I'm mispronouncing his last name. Just out of curiosity, had he ever approached you about his opposition to the plant prior to the 2011 election? Did he show up to any of the public meetings?

Hon. Laurel C. Broten: Yes, I have tabled a document that Simon would have dropped at the door, saying it's back. Mr. Nyilassy did not participate in any of the public meetings that were held. There was a big one during the election campaign. He did not participate in that. I know that the lack of involvement of any PC candidate in that public meeting was raised by the organizers. It caused them significant concern with respect to the disengagement of the PC candidates on this issue.

I do want to say that Mr. Nyilassy and I had a respectful campaign, one to the other. As an example, I think of the strength of support that I have in the community. Mr. Nyilassy came to see me at my victory party on election night, and I know that that's a challenging thing to do, because I've had to do that, go to someone else's victory party. He gave me the nicest compliment that I could have ever received, which is, "Your community really loves you." We had a respectful campaign. I know that he dropped this flyer at the door, but I did not have any direct discussions with him about the gas plant.

Mr. Steven Del Duca: What about any other members of the PC caucus? Did any of them tell you about any issues that they had with the Mississauga plant prior to the 2011 election?

Hon. Laurel C. Broten: Well, I know that Mr. Hudak came to an event, and I was aware of this. I know this from media reports that I have both reread and knew at the time. He stood in front of the plant on the morning of October 5, I believe. "It's done, it's done," Hudak said Wednesday morning of the plant, as workers busied themselves on the construction project behind him." He was committed to that being done.

That was really the resurgence of communication by PC candidates. Mr. Hudak came very late in the game. They did not participate in the public meetings, but they did drop voice mail. I believe there was a robocall that was dropped. They dropped this flyer and another flyer in the community and, I think, tried to take advantage of the Premier's distinction that he made during the debate that

he didn't cancel the plant, and that's because our commitment was one of relocation.

Mr. Steven Del Duca: Now, that notion, that concept, of PC leader Hudak and their party showing up fairly late in this process does certainly line up with testimony that we've heard here at this committee. For example, I'd like to read a quote from Steven Thompson from the Coalition of Homeowners for Intelligent Power, who said, "Obviously, the Conservatives didn't have a problem, through the meetings that we had with Mr. Yakabuski – he didn't see a problem with the plant. He didn't see a problem with the location of the plant."

"So there's sort of a contradiction going on here...."

He also said, "Then, all of a sudden, because there's an election, we get Mr. Hudak actually coming to the table and saying, 'Oh, we're going to help you.'" That's the end of Mr. Thompson's quote.

So, from your perspective, when Mr. Hudak and the PCs argue that they opposed the Mississauga plant from the very beginning, doesn't it seem to you that they are kind of rewriting history a little bit?

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Hon. Laurel C. Broten: As I indicated, there was no participation of PC candidates in any of the public meetings, and I have been informed that Mr. Yakabuski—I'm familiar with Mr. Thompson. I do know the narrative that you've just put forward, that Mr. Yakabuski was accepting and supportive of the plant.

What I know is that during the election campaign, Mr. Hudak made it very clear that he would cancel the plant, that it would be done. He criticized the Premier for using the language of relocation which, as I've indicated in my testimony, is the perspective that we advanced in the view that that is how you relocate that plant, but you do it at the most efficient cost possible, because you continue with the supply contract that Eastern Power would have had, and Greenfield power would have had, to generate electricity into the marketplace. By the end of the campaign, which I think is the critical juncture, every single party had committed that this gas plant should not be there. I don't believe that Mr. Hudak has tabled his costing. He made that same commitment and, in fact, said that it would be relocated.

Ms. Coley participated in numerous public debates with me and was a participant at the CHIP meeting, which is the coalition that you made reference to, and made her commitment that she did not support this plant, that it would not be built there.

At the end of the day, in terms of the community of Etobicoke-Lakeshore, there was no disagreement that this plant should not be there. We made the commitment that if we were re-elected, we would relocate it. Those negotiations were pursued once we were re-elected and were in a position to deliver on that commitment, and it was the commitment that all the parties made.

Mr. Steven Del Duca: Right. With respect to the NDP candidate from your riding, Ms. Coley, I know that—at least, from my impression of some of the questioning that you had earlier from Mr. Natyshak, he tried

to draw, from my perspective, a bit of a distinction between perhaps what their local candidate was saying and what their party leader was saying.

But just to be clear on this one: From the standpoint of your constituents, would they have expected that the commitments made by Ms. Coley during the election campaign would have actually been an accurate reflection of the NDP's position?

Hon. Laurel C. Broten: Absolutely.

Mr. Steven Del Duca: So the idea that they very clearly, both here today and previous to today, have been trying to distance themselves from the commitments made by both their MPPs, frankly, and also candidates during the 2011 election regarding the Mississauga power plant—do you think your constituents would be surprised to learn that when pressed on this issue, Ms. Horwath emphasized that there is a “difference between a candidate and a leader”?

Hon. Laurel C. Broten: I believe so. Ms. Coley was not running as an independent. She was running as an NDP candidate. That was clear on her signs and in her literature. She was participating at meetings, as were other NDP candidates from Mississauga. I don't remember their names; they were not my opponents in the election. But it was consistently expressed by NDP candidates who participated that they did not want this gas plant to be built there. There was no distinction being drawn, as I understand Ms. Horwath is doing. I have no recollection that Ms. Horwath attended in my riding of Etobicoke–Lakeshore during the election campaign, where she would have had the opportunity herself to make that distinction. Her voice on the ground in Etobicoke–Lakeshore was Ms. Coley.

Mr. Steven Del Duca: Okay. Anything else you want to add at this point?

Hon. Laurel C. Broten: No.

Mr. Steven Del Duca: Great. Thanks, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Thank you. The government yields its time to Ms. MacLeod on the PC side—10 minutes.

Ms. Lisa MacLeod: Thanks very much, Chair. That was very entertaining. I really appreciated being able to watch that.

I have a couple of quick questions—Minister, it's good to have you here—just some really basic things, and I'll list through them and if you can just say yes or no, that would be great.

Have you been the MPP for Etobicoke–Lakeshore since 2003?

Hon. Laurel C. Broten: Yes, I have.

Ms. Lisa MacLeod: Cabinet minister since 2009?

Hon. Laurel C. Broten: I was a cabinet minister between 2005 and 2007 and since 2009 forward, yes.

Ms. Lisa MacLeod: Right. Treasury board since 2011?

Hon. Laurel C. Broten: I have been on treasury board since after the last election, yes.

Ms. Lisa MacLeod: 2011—and now you're the vice-chair of treasury board, right?

Hon. Laurel C. Broten: Yes, I am.

Ms. Lisa MacLeod: Okay. That's important information. Was Simon Nyilassy or Ms. Coley ever an MPP?

Hon. Laurel C. Broten: No.

Ms. Lisa MacLeod: Did either of them serve as Minister of Environment? Were either of them ever on the treasury board of cabinet?

Hon. Laurel C. Broten: No, they were never elected.

Ms. Lisa MacLeod: They weren't elected.

Hon. Laurel C. Broten: I've been successful in the last three elections, yes.

Ms. Lisa MacLeod: Okay. In the last three elections, who formed a government?

Hon. Laurel C. Broten: I'm very proud to say that it is the Liberal Party that has formed the government in the last three elections, and I've been pleased to serve as a member of that government.

Ms. Lisa MacLeod: Okay. That's pretty important, because when I listen to Mr. Del Duca and I listen to your responses to my friend Mr. Natyshak, you seem to blur the lines and get a little confused in thinking that those two candidates actually were in any role of decision-making when they weren't—

Hon. Laurel C. Broten: But I think, Ms. MacLeod, that you need to distinguish between an election campaign, when we are all back seeking the support of our voters, we wear a certain hat; right? You continue the role as—

Ms. Lisa MacLeod: It's clear that your Liberal government wore a certain hat when they decided to cancel the power plants in the middle of an election.

Hon. Laurel C. Broten: Can I finish my—

Ms. Lisa MacLeod: I have 10 minutes. You've been here for an hour and a half. I've got some questions for you—

Hon. Laurel C. Broten: I'm going to finish my statement, though, which is about, during an election campaign—

Ms. Lisa MacLeod: We appreciate that, but—

Hon. Laurel C. Broten: —candidates are equal; right?

The Chair (Mr. Shafiq Qaadri): Ladies—

Ms. Lisa MacLeod: We do know, for example, that she was still a cabinet minister at the time. She was still on treasury board—

The Chair (Mr. Shafiq Qaadri): I'd invite both of you to ask the question and answer it, and I'd appreciate not just drive-by questions or drive-by answers.

Ms. Lisa MacLeod: Thanks very much. I have 10 minutes. I have asked for simple yeses and noes and I was given that. You can check Hansard as well as anybody.

In any event, we do know that you were on treasury board, and we do know that you were in cabinet. You do indicate that you knew, a day before the cancellation, that this was going to happen in the middle of an election. Can you tell me who informed you? Was it the Liberal campaign or was it another member of the government,

or was it somebody who served in government and was also a member of the Liberal campaign?

Hon. Laurel C. Broten: I already answered that question when Mr. Natyshak asked it. As I indicated, I received a telephone call from Rod McDonald. That's who I spoke to. I also believe that Dave Gene was in the room or perhaps on the line, but my conversation was with Rod McDonald.

Ms. Lisa MacLeod: And what was Dave Gene doing at the time? Was he speaking on behalf of the government and the Premier, or was he speaking on behalf of the Liberal campaign?

Hon. Laurel C. Broten: As I indicated, my conversation was with Rod McDonald, who was an individual within our party who—

Ms. Lisa MacLeod: I asked you about David Gene.

Hon. Laurel C. Broten: But I've said to you that I did not speak to David Gene—

Ms. Lisa MacLeod: But he was in the room, so what was he acting as—a Liberal campaigner or a government official?

Hon. Laurel C. Broten: We were during an election campaign, so everyone was part of the campaign.

Ms. Lisa MacLeod: Okay. That's good to know. There was no distinction between the Liberal government and the Liberal campaign team. I think taxpayers would like to know a little bit more about that.

Interjection.

Ms. Lisa MacLeod: Well, taxpayers are on the hook for \$1.2 billion, thanks to your government. Let's be perfectly clear. I'll just respond to your silly heckles.

As Minister of the Environment, you approved the siting of the plant with no opposition—

Hon. Laurel C. Broten: That's not accurate.

Ms. Lisa MacLeod: But you said that when you were talking to Mr. Del Duca, and I invite you, as I've invited the Chair, whose riding is right beside yours, to review the Hansard. I think that's rather important.

I want to go back to an exchange between Peter Wallace and—

Hon. Laurel C. Broten: Ms. MacLeod, I do want to—

Ms. Lisa MacLeod: —Mr. Vic Fedeli several weeks ago regarding a July 2011 walk-around. We've established that you were in cabinet, that Simon Nyilassy and Ms. Coley were never in government, but you were in cabinet in July 2011. Mr. Wallace said, "I believe there's a good chance this would not be the first time." What he was referring to "as the first time" was a July 2011 walk-around being the first time the cancellation came to cabinet. We also know from several other people that this information would have come to cabinet before then. So there was no way that this information on what the cancellation costs would be would have only come to cabinet in July 2011. Can you remember, as Minister of the Environment or minister who was sitting at the cabinet table in any capacity, this information coming to cabinet?

Hon. Laurel C. Broten: I'm going to try to do my best to answer your questions, Ms. MacLeod, and not

aggravate you with my answers, but July 2011 was prior to any announcement being made. As I've done my best to indicate to this committee, in June 2011, when this construction surfaced at the end of May, my community was surprised. I was concerned. I began advocating on behalf of my community for the Mississauga gas plant to be relocated, that it should not be built behind the Dorothy Ley Hospice, which is, for your information, a palliative care hospital where people go to die, behind the renewed construction of the Trillium Health Centre—
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Ms. Lisa MacLeod: So why would you agree to the siting of it, with that information that you surely would have known as a local MPP? Why would you have agreed to it in the first place?

Hon. Laurel C. Broten: I'm not sure where you're getting your information.

Ms. Lisa MacLeod: As Minister of the Environment; I mean, this is Mississauga—

Hon. Laurel C. Broten: I've tried to do my best to explain—

Ms. Lisa MacLeod:—and then I've asked you about Oakville—

Hon. Laurel C. Broten: Okay.

Ms. Lisa MacLeod:—but you've just led me back to asking—

Hon. Laurel C. Broten: I'm doing my best to answer your questions, Ms. MacLeod, but you're talking about both Mississauga and Oakville at the same time. So let's talk about—

Ms. Lisa MacLeod: Well, that's because taxpayers want to know.

Hon. Laurel C. Broten: Let's talk about Mississauga. As I've said, during my time as Minister of the Environment, Greenfield South Power, Eastern Power—they've had a number of different names—issued a notice of completion of the environmental review, and a number of requests were made for individual environmental assessments.

As I explained to Mr. Natyshak, that decision package did not come forward to me as minister, because during the entirety of that time, the matter was before the OMB. The OMB decision was made at the beginning of October 2007. The appeal period was completed at the end of October 2007. I was no longer Minister of the Environment past October 2007. A decision was made by the new Minister of the Environment, Minister Gerretsen, in July 2008. That is the extent of the period of time that it took the Ministry of the Environment to complete the reviews that they undertake in order to make sure that a minister sitting in the seat of a decision-maker has the information they need to make that decision, and you do not review or make any decisions prior to the completion of that package.

Ms. Lisa MacLeod: Okay, thanks. So you were in cabinet. Let's go back to Oakville and the cancellation. Presumably, at the time, the Minister of Energy or a senior official in the OPS—did they categorically state at any time that the cost would be \$40 million?

Hon. Laurel C. Broten: As I indicated to Mr. Fedeli, I was very focused on my own line responsibilities. I was not Minister of Energy and I was not Minister of the Environment; I was Minister of Children and Youth Services and minister responsible for women's issues, and then following—

Ms. Lisa MacLeod: But certainly you had an obligation. It's in your own region.

Hon. Laurel C. Broten:—Minister of Education and Minister of—

Ms. Lisa MacLeod: I mean, Oakville is not that far from Etobicoke.

Hon. Laurel C. Broten: You know, as I indicated, I was very focused on the Mississauga gas plant—

Ms. Lisa MacLeod: So you weren't fulfilling your obligation as a cabinet minister—

Hon. Laurel C. Broten:—because that was relevant to my community.

Ms. Lisa MacLeod:—in terms of keeping up with the issues?

Hon. Laurel C. Broten: The Oakville gas plant was not something that was being raised by my constituents. It was not a file that I was involved with. As I answered to Mr. Fedeli—

Ms. Lisa MacLeod: So it's safe to say that if you don't have an interest in it—

Hon. Laurel C. Broten:—I was informed about the cancellation of the gas plant in Oakville in the media.

Ms. Lisa MacLeod:—if it doesn't interest you in your cabinet portfolio or in your riding, you just don't pay attention as a member of cabinet?

Hon. Laurel C. Broten: If you have information that you would like to pose to me, something specific, rather than conjecture—

The Chair (Mr. Shafiq Qaadri): You're driving Hansard insane by the double-talk.

Hon. Laurel C. Broten:—you can feel free to do that.

Ms. Lisa MacLeod: Did you first hear that there would be an additional cost for the Oakville cancellation at any time before 2011?

Hon. Laurel C. Broten: As I indicated, I have no specific recollection with respect to the costing of the Oakville gas plant. I was focused on my own responsibilities. If you have something specific and you'd like to identify it for me—

Ms. Lisa MacLeod: Well, certainly.

Hon. Laurel C. Broten:—re a cabinet meeting that I was a participant in, that I should be aware of—

Ms. Lisa MacLeod: I've been here, and I've questioned Premier Wynne on a number of occasions—

Hon. Laurel C. Broten:—I'm happy to take a look at that.

Ms. Lisa MacLeod: But I think it was quite clear that this was raised in cabinet. The sunk costs were raised in cabinet.

Hon. Laurel C. Broten: If you would like to point to something specific that you are basing your statement on, I'm happy to review that—

Ms. Lisa MacLeod: You're being very evasive, and I think that that's quite problematic. I think that for you—

Hon. Laurel C. Broten:—but if you continue to use conjecture, I will not be able to answer your questions.

Ms. Lisa MacLeod: But the problem is, Minister, whether it's Oakville or Mississauga, you were a cabinet minister sitting at the table. You're now on treasury board. You're refusing to answer questions—

Hon. Laurel C. Broten: That's absolutely not the case, Ms. MacLeod.

Ms. Lisa MacLeod:—you're talking above me—

Hon. Laurel C. Broten: I've come here today to answer your questions.

Ms. Lisa MacLeod:—as you are right now, when I'm trying to actually use my 10 minutes of time to make a point.

Hon. Laurel C. Broten: I've indicated when I recused myself from treasury board decisions—

Ms. Lisa MacLeod: I think that the problem we've got, Minister, is that you're refusing to acknowledge information that you've had. You're refusing to come clean here at committee today, and you're refusing to give answers to the very people you claim to represent—

Hon. Laurel C. Broten: If you have something specific that you'd like to direct me to—

Ms. Lisa MacLeod: Well, I specifically asked you about the \$40 million.

Hon. Laurel C. Broten:—I'd be very happy to answer your questions.

Ms. Lisa MacLeod: I've specifically asked you about when you knew and what you knew. You've been refusing to do that.

Hon. Laurel C. Broten: I've answered all of your questions with respect to the Mississauga gas plant.

Ms. Lisa MacLeod: I've asked you why you sited the plants in Mississauga as Minister of the Environment when you were the MPP and you had the answers—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. I think all members of the committee thank you for your contribution.

We now move to the NDP. Mr. Tabuns.

Mr. Peter Tabuns: Minister, what did Rod McDonald say to you when he called you on September 23? What were his words?

Hon. Laurel C. Broten: I don't have a specific recollection of his words. I can tell you the gist of them.

Mr. Peter Tabuns: Tell me the gist of them.

Hon. Laurel C. Broten: Sure. It was that we would be in a position to publicly communicate that, if we formed government, we would relocate the Mississauga gas plant.

Mr. Peter Tabuns: And did he say what development allowed this to happen?

Hon. Laurel C. Broten: No. I certainly had been a strong advocate for my community since the beginning of June, indicating that we needed to re-examine this—that a single wind turbine would not be allowed to be sited in that land space with respect to the setbacks—and

it caused me and my community great concern that a gas plant would be there, but—

Mr. Peter Tabuns: Minister, I understand, because I listened to your testimony. What did he say to you?

Hon. Laurel C. Broten: He said that I would be able to participate in an announcement with my colleagues on the Saturday morning and that we would be in a position to make it clear that we would relocate the gas plant.

Mr. Peter Tabuns: And that was it?

Hon. Laurel C. Broten: Yes.

Mr. Peter Tabuns: You've noted that Dave Gene was part of this call. How did you intuit that he was somehow part of this call?

Hon. Laurel C. Broten: To the best of my recollection, Mr. McDonald said, "I'm here with Dave Gene," or "Dave Gene is on the line." Whether they were physically present together, I don't have that information.

Mr. Peter Tabuns: But you didn't hear him speak; you just had Mr. McDonald—

Hon. Laurel C. Broten: I had a conversation with Mr. McDonald.

Mr. Peter Tabuns: Okay. You were the Liberal voice on the ground in your riding in the 2011 election.

Hon. Laurel C. Broten: Absolutely.

Mr. Peter Tabuns: And you were saying, "I will oppose this gas plant." As I understand it, your Premier and the leader of your party was supporting this gas plant publicly up until, I guess, September 24, so there was—

Hon. Laurel C. Broten: No, I don't think that's the case. I think—

Mr. Peter Tabuns: No? When did your Premier say this plant was a bad idea?

Hon. Laurel C. Broten: There are media reports in and around June. I'm just searching for them. If I can't find it quickly I don't want to use up your time. I would get that for you.

Mr. Peter Tabuns: So in June, the Premier was saying this plant was a bad idea and he let the construction continue?

Hon. Laurel C. Broten: In June and around that period of time there was a media report that indicated the Premier thought that there was concern about this plant. So I think he was hearing me and was hearing my colleagues Mr. Sousa and Donna Cansfield. We were all surprised by the receipt of the beginning of a construction and of a building permit from the city of Mississauga at the end of May, and we were engaging directly. I was working with Minister Wilkinson, writing to him—

Mr. Peter Tabuns: I actually don't need that information. As far as most of the world would have known—and my guess is the reporters sitting at the table behind you would have known—that the Premier supported the construction of this gas plant because he wasn't taking any public action to stop it. In fact, for most of the world, we found out that the Liberals were going to stop this gas plant September 24. So you were campaigning against the gas plant during this election and, as far as the rest of the world knew, the Liberal Party and the Premier supported this gas plant up until that announcement.

Hon. Laurel C. Broten: I'm trying to do my best to find that—

Mr. Peter Tabuns: Or he was allowing construction to go forward while he opposed it.

Hon. Laurel C. Broten: Well, the construction, as you know, was not something that the province would have been involved with—

Mr. Peter Tabuns: Oh, no, they were very involved with it.

Hon. Laurel C. Broten: The building permit would have been issued by the city of Mississauga. The zoning was by the city of Mississauga.

Mr. Peter Tabuns: Yes, but the contract was with the province of Ontario. At the time, the leader of this province was a certain Liberal, a Mr. McGuinty. So, you were campaigning against the plant that your Premier was proceeding to have built at the time. Is that correct?

Hon. Laurel C. Broten: As I've indicated to you, the building permit was issued by the city of Mississauga. The zoning was by the city of Mississauga. You know, as someone that has been active in the environmental community, that Minister Wilkinson—

Mr. Peter Tabuns: So, should we hold Hazel responsible?

Hon. Laurel C. Broten: —was undertaking a review with respect to the approvals, and that review was ongoing.

Mr. Peter Tabuns: Yes, you're saying that Mississauga issued building permits etc. They didn't have a contract to build a plant; they didn't initiate the construction of the plant. Your government initiated construction of the plant and supported the construction of the plant until, very shortly before an election campaign, senior campaign staff contact you and say, "You know, you can say we're not going to build this thing anymore."

Hon. Laurel C. Broten: I've done my best to answer you.

Mr. Peter Tabuns: I just want to point out that your position on the ground and the position of your Premier were very different in the course of this campaign up until September 24. Correct?

Hon. Laurel C. Broten: Well, as I have indicated, there were media reports in June where the Premier indicated we might need to take another look at this. That was in and around the time that I was raising issues of concern to my colleagues Minister Wilkinson and Minister Duguid. It was all very new when, at the end of May, the building permit was issued, as I've done my best to inform you about. There was a period of time where this sat very, very dormant—

Mr. Peter Tabuns: Oh, I'm well aware.

Hon. Laurel C. Broten:—where it was the view that this construction would not happen.

Mr. Peter Tabuns: But I don't need that information. You are aware that the contract with Greenfield was amended in March 2009?

Hon. Laurel C. Broten: You can inform me of that, and you have. That was not something that I would have

been directly advised or informed of at the time. I don't have a specific recollection of that.

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Mr. Peter Tabuns: Do you think Ontario would have saved a lot of money if in March 2009, instead of doubling the amount of funds that were going to be paid to Greenfield—which by the way, mind you, then made it viable for them to get financing even if it was financing from Cayman Islands and Luxembourg—if we'd not renegotiated in 2009, don't you think we would have saved a lot of money?

Hon. Laurel C. Broten: You know, I'm not knowledgeable enough about those specific details of the contract to answer your question in that regard.

Mr. Peter Tabuns: Do you think we would have saved a lot of money if this had been stopped before construction started? Or before financing was obtained—even more to the point.

Hon. Laurel C. Broten: As I've said, my commitment to my community was that in May, towards the end of May 2011, when it became clear that this would begin—and I think it's really important for those who don't live in the Etobicoke-Lakeshore-Mississauga vicinity to understand—nothing was happening. The site was dormant.

Mr. Peter Tabuns: Yes. You have said that.

Hon. Laurel C. Broten: There was the issuance of a building permit and construction started, and immediately upon that time I raised issues with Minister Duguid and Minister Wilkinson.

Mr. Peter Tabuns: You have said that.

Hon. Laurel C. Broten: Obviously, during that election campaign, which began, your candidate on the ground, Ms. Coley, as well as the Progressive Conservative candidate—everyone agreed that this gas plant should not be constructed there.

Mr. Peter Tabuns: You opposed the gas plant. Ms. Coley opposed the gas plant. Your Premier supported the gas plant; in fact, he let it go forward.

If we listen to Hazel McCallion, Mayor McCallion's sworn testimony here was, "It would've been a lot cheaper to deal with this if it had been stopped before construction started." Do you agree with the mayor?

Hon. Laurel C. Broten: I think hindsight is always 20/20—

Mr. Peter Tabuns: No, no, no. Lots of people can understand that a shovel in the ground means a higher price tag. You don't think that in advance you would have known that it would've been cheaper to stop before—

Hon. Laurel C. Broten: I can tell you that I was extremely disappointed that Greenfield or Eastern Power continued with the construction once we made it clear that if we were re-elected, we would not allow that plant to be there. That was consistent with every other party—

Mr. Peter Tabuns: I'm not actually interested in that.

Hon. Laurel C. Broten: —and so, as you would know, a great deal of work took place after that fact.

Mr. Peter Tabuns: But I'm not interested in that testimony, in fact.

Do you agree the Mississauga gas plant was too close to schools, roads, railway lines and the hospital?

Hon. Laurel C. Broten: Yes.

Mr. Peter Tabuns: Charles Sousa said in a letter to his constituents, "Prior to being elected, I requested a full environmental assessment on this site, given the close proximity to homes, railway lines, the Etobicoke Creek and the hospital." Your government, your Minister of the Environment, didn't seem to agree. Don't you think he should've conducted an assessment? Don't you think Mr. Gerretsen should've had a full, individual environmental assessment, given what you've had to say, what Mr. Sousa had to say and what most people would observe from looking at a map?

Hon. Laurel C. Broten: I think I'll allow the decision that Minister Gerretsen issued in July 2008 to speak for itself.

Mr. Peter Tabuns: Did you agree with his decision in 2008, given you were the member for Etobicoke-Lakeshore?

Hon. Laurel C. Broten: Minister Gerretsen was the decision-maker in July 2008.

Mr. Peter Tabuns: I asked if you agreed, not whether he—

Hon. Laurel C. Broten: He put forward an extensive decision. That decision stands for itself.

Mr. Peter Tabuns: Did you agree with it? Now just a second. You're an educated person. You've held this portfolio. Did you agree with his decision to not do a full environmental assessment?

Hon. Laurel C. Broten: I don't know what decision I would have made if I was in that circumstance. I was never in that circumstance.

Mr. Peter Tabuns: You don't have to evade the question; you know the answer. Did you agree with it? You opposed this plant.

Hon. Laurel C. Broten: Listen, I think that you, as someone who understands administrative law—the decision-maker is the decision-maker. Minister Gerretsen made the decision in July 2008. I raised concerns in June 2011 that I believed the realities of the community had changed significantly, that towers had been built, that Dorothy Ley Hospice had been built, that Trillium Health Centre had been renovated, and that I thought those reviews need to take place again.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

Mr. Bob Delaney: Minister, as you are no doubt aware, in May 2012, last year, the estimates committee passed a motion by Mr. Leone that asked for all correspondence within a specific time frame in the Ministry of Energy, from the Minister of Energy and from the Ontario Power Authority, related to the Oakville and Mississauga gas plants. At the time the motion was passed, there were complex and sensitive negotiations ongoing with both companies. We've asked many witnesses at

this committee the very same question, which is, what would have happened if, as the estimates committee was at the time demanding, commercially sensitive information had been made public before the negotiations were finalized? Every single witness has responded that it would have put the province at a huge disadvantage because its negotiating position would have been prejudiced. You're a former litigation lawyer. Do you agree with that?

Hon. Laurel C. Broten: Well, as somebody who has negotiated many agreements, I certainly would not view that I would be in a good bargaining position if those with whom I was negotiating knew my negotiating parameters. If that is the content of documents, then it would cause me great concern that that would have been released to those with whom we were negotiating.

Mr. Bob Delaney: Part of the committee's job is to review the opposition allegations of contempt against Mr. Bentley around the disclosure of these sensitive documents. When we asked Mr. Bentley about the very difficult position that he was in, in terms of disclosing documents versus protecting the public interest, Mr. Bentley testified—and I'll use his words—that “producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario. Having said that, I always intended to produce the documents. It was a question of when, not if.” I'm wondering if you could share with the committee some of your views on the allegations made by the opposition that Mr. Bentley acted in any manner other than in the public interest.

Hon. Laurel C. Broten: I certainly know Minister Bentley well. He was my seatmate in the Legislature during that period of time. I know that in all instances he was acting in the best interest and putting forward what he believed to be the most appropriate course of action. Each of us, in our roles as cabinet ministers, takes full responsibility for the work that we are doing; we rely on each other with respect to the knowledge and judgment that we bring forward on our specific files. I know that Minister Bentley was someone who was diligent, did his homework and knew his files.

Mr. Bob Delaney: Thank you. I think we're all in agreement that the Mississauga gas plant was not properly sited. In fact, all three parties committed to the people of Mississauga that they would not build the plant, if elected.

Minister Chiarelli recently announced that the Ontario Power Authority and the Independent Electricity System Operator would be reporting back with their recommendations on a new planning process for energy infrastructure siting. This report will also consider recommendations from this committee. So in that vein, and given your experience, do you have any other recommendations to share with the committee on how future sites for energy infrastructure should be selected?

Hon. Laurel C. Broten: Thanks very much. I think it's really important for all of us to think back to the fact

that this process by which Minister Gerretsen made a decision in July 2008, and then which ultimately sat dormant until 2011, was based on application materials that came in in 2004. I think we've learned a lot in our province since 2004. We've revised the way we would site wind turbines, as an example, with certain setbacks. I know myself, as Minister of the Environment during that period of 2005 to 2007, I fully refreshed and revised all of our emission standards under regulation 41. We made a lot of changes during that period of time.

Also, communities change. I think what we've learned, especially in fast-growing metropolitan areas like my riding and like yours, Mr. Delaney, is that's important that we are always touching base with what's happening in the community. Is it still a field there? Is it still commercial land, industrial land? Or is it a place where people live? I think, to some extent, that is what I tried to raise with Minister Wilkinson and Minister Duguid at the time, saying that the community had changed a lot since 2004. So if you were basing your decision on information that was available in 2004 about what that community looked like, it looked a lot different now. I think that would be something that I would suggest we need to do.

I think it's also really important, as we committed to on that day of September 24, that a gas plant would not be close to schools and hospitals. Children should not go to school at the doorstep of a natural gas plant, and someone who might have health issues should not be in their hospital bed beside a gas plant. Those, for me, were important issues that I raised to Ministers Duguid and Wilkinson, and I would suggest, as a government and as a society, that we give consideration to that, with respect to how we site natural gas plants. We need them and they should be close to us, but we should be conscientious about where we locate them.

Mr. Bob Delaney: Thanks. There's been a little bit of rapid-fire exchange back and forth. Is there anything else you would like to add to your testimony today that you didn't get a chance to add?

Hon. Laurel C. Broten: Sure. Thanks very much. I think it's really important to understand that it surprised everyone, at the end of May or the beginning of June, that this was going to come to fruition and a plant would be constructed. Listen, in hindsight, I think we can all look back and say “would have, could have, should have”; it would have been different. The reality is that the communities were unified in their perspective that was advanced in and around June, July, August, September and October that this gas plant shouldn't be here. Those who were seeking to be elected in the community also had a unified voice. Not always, as I said. I don't know what Mr. Nyilassy was perhaps saying at the doorstep; I was not there. But I did not know of anything he was saying, and he did not participate in the public meeting.

But surely, by October 5, when Mr. Hudak said, “It's done,” and he stood in front of the Mississauga gas plant, it was very clear that the leader of the PC Party would have cancelled the Mississauga gas plant. Ms. Coley,

who represented Ms. Horwath in our community, was absolutely clear that the gas plant should not be built. So all of us were advocating and raising issues of concern to our community and were essentially making the same commitment to Ontarians: If we were elected, we would find a pathway forward where the Mississauga gas plant would not be built. We were the ones who were elected, we found that pathway forward, and I know that my community and the residents of Etobicoke–Lakeshore and beyond are pleased that there is no gas plant being built in Mississauga.

Mr. Bob Delaney: Just to reiterate one more point that you made earlier, your PC opponent didn't attend all-candidates meetings.

Hon. Laurel C. Broten: I certainly have the recollection of attending many meetings with Ms. Coley. Whether Mr. Nyilassy attended any, I don't have a specific recollection. What I do know is that he certainly did not attend the meeting that was put forward by CHIP, and I don't think he attended any others where we would have spoken about this issue.

Mr. Bob Delaney: Indeed, it seemed to be the case throughout Mississauga that many PC candidates avoided all-candidates meetings.

Thank you, Chair. I think we're done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thank you, Minister Broten, for your presence and testimony. You are respectfully dismissed.

The committee is recessed till this afternoon, unless there are any further issues right now? Fine. The committee is recessed.

The committee recessed from 1003 to 1500.

ONTARIO POWER AUTHORITY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy officially to order once again. We are here with our first presenter of the afternoon: Mr. Jim Hinds, chair of the Ontario Power Authority. Welcome, Mr. Hinds.

Mr. Jim Hinds: Thank you, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): I'd like you to be affirmed by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be truth, the whole truth and nothing but the truth?

Mr. Jim Hinds: I so swear.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Hinds, I'm going to offer the floor to Mr. Tabuns eventually, but you have your five-minute opening address.

Mr. Jim Hinds: Thank you, Mr. Chair. My name is Jim Hinds. I've been chair of the OPA since December 9, 2010. From June 2005 until December 2010, I served as a director and as chair of the board of the Independent Electricity System Operator. I also have a federal government appointment as an Ontario representative to the Canadian Securities Transition Office, a group under-

taking to construct a national securities regulator in Canada. Until I retired in 2003, I worked for two decades as an investment banker.

The board of the OPA is responsible for managing and supervising the management of the business and affairs of the OPA. At its creation in late 2004, OPA was given a mandate in three broad areas: electricity system planning, procurement of new electrical generation of all types, and conservation programs.

The OPA advises the government on electricity policy. The OPA does its job primarily by acting upon the authority provided by directives and letters issued to it by the Ministry of Energy. Since its inception, the OPA has received 64 directives and more than 11 letters. That's an average of about one a month.

In the intervening eight years, OPA has played a central role in the improving electricity supply situation in the province. This successful effort has involved many others: the Ministry of Energy, IESO, the Ontario Energy Board, Hydro One, Ontario Power Generation, private power generators, the local distribution companies and the customers themselves.

I'd like to address three issues. The first is the role of the OPA board; the second is the provision of documents and information to legislative committees; and finally, some suggested lessons learned.

The role of the board: In the case of both gas plants, the board of the OPA received a decision to relocate the plants with some dismay, having seen the plant proposals develop over five years. Although I was not a member of the board at the time of the decision to cancel the Oakville plant, I know that in both cases the board decided that in light of the lack of government, political and community support for the gas plants in their initially proposed locations, it was in the best interests of the electricity system to accept the decision to renegotiate the contracts with the counterparties and to relocate the plants if this could be done on commercially reasonable terms for the ratepayer. Ultimately, this was achieved.

The document disclosure issues: The OPA board has identified and continues to identify lessons learned from the document disclosure. One of the lessons learned is that full compliance with the disclosure order within the time frame specified by the estimates committee was unachievable. We have made every effort to be as transparent and accountable as possible. We have and will continue to review our processes so that future document searches are based on best practices. Nevertheless, the scope of requests needs to be clearly defined upfront, and the timelines have to be realistic.

The second lesson learned is that the public interest requires a better way for us to deal with the disclosure of sensitive matters to the Legislature. On a daily basis we deal with matters of commercial sensitivity, matters in litigation, and matters covered by solicitor and client privilege. All three principles are at the foundation of our business dealings with electrical generators and customers in the province. The first witness before this committee proposed some practical and workable solutions to

this problem, and we have subsequently attempted to provide some solutions ourselves. Together, I believe that we can and must find a better way to do this that allows the committee to do its work but which better protects the public interest.

Lessons learned from the cancellation and relocation decisions: There are probably many lessons to be learned from these episodes, but I would suggest two. First, we need to realign planning and siting functions with current system conditions. Siting and building generation when there's a supply crisis like 2004 through 2007 is one thing; doing it when supply is in good shape is quite another. I do not think it is a coincidence that the two cancelled gas plants were the last two of 17 facilities to be built up to now. As long as the electricity customers of the province expect to be able to flip the switch and have the lights go on whenever they want, the generation has got to go someplace and the transmission has got to get it to the local distribution companies so they can get it to their customers.

On May 6, 2013, the Minister of Energy asked OPA and the IESO to consult on the development of regional energy plans in the siting of large energy infrastructure and to make recommendations by August 1, 2013. We are actively working on this file.

Second, we need to reconsider the standards for transparency with respect to the electricity system. As an outcome of the proceedings of various committees, a vast amount of information has been put and continues to be put into the public domain. When the dust settles on the committee process, OPA will need to revise its information and communications practices and protocols. The issues remain the same: trading off greater transparency against the rights to privacy and commercial confidentiality. But I believe that the line has shifted, and we should treat it as an opportunity to educate the ratepayers and the citizens of the province about the excellent electricity system in Ontario, which it has been my pleasure to serve.

Thank you for the opportunity to speak.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hinds. Thanks for your precision timing.

I offer the floor to Mr. Tabuns, who has the floor for 20 minutes in total.

I'd just inform members of the committee that instantaneously, once the bells ring, the committee will be recessed for the vote. For those of you who would like to avoid a summer election, I'd invite you to attend that.

Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, I appreciate your incentive for paying attention to the bells.

Mr. Hinds, thank you for being here this afternoon.

You talked about the role of the OPA board with regard to the gas plants decision. How independent do you consider the OPA to be?

Mr. Jim Hinds: It's a difficult question to answer, but the starting point for the answer is that the OPA was created by statute, the Electricity Act. The Electricity Act charges the organization with a whole bunch of different

objects, grouped broadly into the categories I mentioned in my opening remarks. The statute, in fact, creates the board, and the board serves underneath that.

There are a lot of mechanics inside that statute that deal with how the government relates to the OPA. The two principal ones, I mentioned before, are directives and letters. The OPA receives its work, if you will, primarily from directives issued to it by the Ministry of Energy. Those directives are issued to the organization; the board plays a role in implementing those directives.

Mr. Peter Tabuns: So why do you exist when the Ministry of Energy could sign contracts for the crown directly?

Mr. Jim Hinds: I was not present at the creation of the OPA in the Legislature, but I gather it was discussed at great length there about the need to create a separate crown agency or the desirability of creating a separate crown agency to achieve the objectives of the Electricity Act.

Broadly speaking, if I can just offer a personal opinion, I think there was, at the time of the OPA's creation, a fairly significant supply crisis in the province. I think it was felt that there was a need to get new generation commissioned quickly. I think it was felt that in order to do that, creating a credible counterparty that had a strong credit rating and could go out and contract with as many different sources of energy as could be put together in the time frame—I think those were some motivating reasons for doing it as a separate agency.

Mr. Peter Tabuns: Okay. Do you believe the Ontario Power Authority board has a responsibility to protect ratepayers?

Mr. Jim Hinds: I believe that our responsibilities, again, are spelled out in the Electricity Act. I think we have some responsibilities, clearly, to the province and to the political system in terms of the taxpayers and also the citizens. In that, I'm thinking particularly of the green energy—the carbon dioxide emission reduction part of what we do. But I think one of our key responsibilities at the OPA is to make sure we get the best value for the ratepayer that we can, within the confines of the various directives we get. There are different ratepayer aspects to every directive that we get.

Mr. Peter Tabuns: Was the Ontario Power Authority legally obliged to cancel the Mississauga gas plant or the Oakville gas plant?

Mr. Jim Hinds: I will not be able to answer that question as a fees-paid, practising lawyer, so I'll give you the perspective I would have as chair of the board. The contract that both counterparties—TransCanada and Eastern Power—had was with the OPA. My understanding of the circumstances was that once those counterparties had that contract, the government could not unilaterally cancel it. There had to be some action taken by the government through legislation, and I think there were various options that were looked at. The other option was to attempt to get us, the OPA, the counterparty, to engage in renegotiation discussions with the two proponents.

So in fact, the way it worked out—and again, I'd have to defer to a lawyer—I don't know that the contracts were ever cancelled. I believe they were successfully renegotiated. So I suspect that legally the original contracts were fine. It's just that a lot of things changed as a result of the renegotiation.

1510

Mr. Peter Tabuns: Who specifically told you, as chair of the Ontario Power Authority, that these contracts had to be renegotiated?

Mr. Jim Hinds: I don't think I was ever told specifically by anybody that they had to be renegotiated, but I think it was the sense of the board that it was beneficial to do so. There were some obvious outcomes to each situation, one of which—again I'll speak to Mississauga on this one because I was actually on the board at the time. There is the legislation outcome, where it could be brought to the House and then getting into areas I don't know, but presumably legislation could be passed that would terminate the contractual rights of the counterparty. The other one was essentially, what do we do with where we are right now? Should we sit down with the plant counterparty and try to figure out how we can put this plant in a different location, different place? Or there would have been, I guess, the option of doing nothing and having the counterparty sue us and dealing with it as a litigation matter in court.

Mr. Peter Tabuns: With regard to Mississauga—you weren't there for the Oakville cancellation?

Mr. Jim Hinds: That's correct.

Mr. Peter Tabuns: What was the reason given to you for the cancellation, or the "relocation," to use your language?

Mr. Jim Hinds: Well, as I recall, there was a promise made in the middle of the election or just leading up to the election—in 2012?

Mr. Peter Tabuns: In 2011.

Mr. Jim Hinds: In 2011. There was a promise made by the Liberal campaign that they would cancel and relocate the plant. That was, I think, around the 27th of September, 2011. There was a lot of commentary in the media, and the other parties stated their positions on the issue. Then the election happened on October 6, 2011. And then, fairly quickly thereafter, it moved into a mode where we had to deal with it.

Mr. Peter Tabuns: So did the government of the day ever come to you and say, "We're cancelling this plant because of X," or "We're cancelling it because we've done an environmental assessment, and we've realized that it's a tragic environmental mistake"?

Mr. Jim Hinds: I personally never got that type of discussion. In terms of the organization, I can't speak to how it was communicated. It was fairly apparent what the issues were. I think the beginning of the discussion started shortly after the election when there were questions that happened because I think the plant proponent continued to try to build. Cement trucks were continuing to show up, and the level of political anxiety, I would say, at that point, increased substantially.

Mr. Peter Tabuns: Well, I have my own interpretation of what the factors were that were fairly apparent. Could you be more specific about what the fairly apparent factors were that led to the cancellation?

Mr. Jim Hinds: Again, I express my opinion as just a person reading the newspaper. I think it was a lot of community opposition in the immediate vicinity of the proposed plant and some concerns from adjacent communities about airshed quality.

Mr. Peter Tabuns: Those had been concerns for years.

Mr. Jim Hinds: Yes.

Mr. Peter Tabuns: What crystallized action on this?

Mr. Jim Hinds: Well, I don't think it's an accident that it was in the course of an election—

Mr. Peter Tabuns: No, I don't think so either.

Mr. Jim Hinds: So I guess the community opposition found an audience in the political decision-makers to push their point forward.

Mr. Peter Tabuns: I would agree. I would say it was no surprise that it was a decision made during an election. There were votes to be taken and votes to be lost. The government made the decision on that basis.

In the end, how was it communicated to you that this plant had to be stopped and relocated?

Mr. Jim Hinds: Well, in terms of communications to me personally, I received a phone call on late Friday night, the 26th, from Mr. Morley, Chris Morley, who was a volunteer on the Liberal campaign, giving me a heads-up—

Mr. Peter Tabuns: Pretty senior volunteer, yes.

Mr. Jim Hinds: Yes. Formerly, before the campaign, he'd been the Premier's chief of staff.

Mr. Peter Tabuns: Yes.

Mr. Jim Hinds: He was giving me a heads-up that this was going to be made part of the Liberal campaign sometime in the future—campaign promises. I thanked him for the call. I appreciated the heads-up.

Mr. Peter Tabuns: This was a few days before the public announcement?

Mr. Jim Hinds: This was the night before.

Mr. Peter Tabuns: The night before. Can you remember in any greater detail what he said to you?

Mr. Jim Hinds: It was a fairly short phone call. He was just giving me literally a heads-up that this was going to be in their campaign materials. When I got that, I consulted with the people at the OPA and asked them what the significance was and what our reaction would be. The OPA began to prepare their thoughts for this plan.

I must say, we have a lot of things on the go, and I was not intimately familiar with the details of this plant. We have 17 different gas contracts going on. We have something like 20,000 contracts. I just didn't have a high degree of personal knowledge on that, so I wanted to get educated on it.

Mr. Peter Tabuns: So Chris Morley gives you a quick call the night before the announcement was made, and he didn't say why it was being cancelled? Or did he?

Mr. Jim Hinds: No, he did not.

Mr. Peter Tabuns: He just said “you should be aware” —

Mr. Jim Hinds: Heads-up; you should be aware.

Mr. Peter Tabuns: Okay. When was the next time you were contacted by someone senior in either the Liberal election machine or the Liberal government?

Mr. Jim Hinds: There was no further contact to me personally during the period until after the election —

Mr. Peter Tabuns: I’ll stop you there for a moment — if not to you personally, to others on the board or the senior management prior to the election?

Mr. Jim Hinds: I don’t know about others on the board, and I have no knowledge of contact at the OPA itself.

Mr. Peter Tabuns: Okay. Then let’s go to the post-election period. I interrupted you, and I just wanted to make sure I had covered off that period. The post-election period?

Mr. Jim Hinds: Yes. In the post-election period, there was a lot of activity going on at the OPA trying to assess what this was and what was going on and what our legal options and remedies were. The next contact I had directly myself from a senior—I believe we actually had a board meeting in the intervening time; I would have to check the dates, to bring the board up to date on what was going on, to try to figure out the strategy on what we wanted to do. The next call that I received was from Mr. Jamison Steeve. I have to check the date. It was on Friday, November 18, 2011.

Mr. Peter Tabuns: And what was he calling you about? What did he have to tell you?

Mr. Jim Hinds: He was calling to ask me the status of the discussions between the OPA and the developer with respect to getting them to stop construction or getting them to get to an agreement on how we would resolve this issue. My response to him—I was actually in an airport at the time. I said, “I’m boarding a plane, and you should communicate with our chief executive.” When I landed, I subsequently checked with our chief executive, and that communication had gone through.

Mr. Peter Tabuns: By this point, had the Minister of Energy directed the OPA to cancel the contract?

Mr. Jim Hinds: The Minister of Energy I don’t believe was entitled to direct the OPA to cancel—again, I’ll defer to a lawyer on this, but I think because we had the contract already, I think that limited the options that the minister could pursue. What was done instead was an exchange of letters, where the minister sent the OPA a letter dated October 24. I sent the minister back a letter dated November 10, and then the minister sent another letter dated November 14. All these dates are in 2011. I think Mr. Bentley’s testimony characterized it as an exchange between the minister and the OPA, which went along the lines of, to paraphrase former Minister Bentley, “Start to work to renegotiate this contract.” My letter back to him was correctly characterized as, “Who’s going to pay for this?” His letter back to me he characterized

as, “We’ll talk about it.” That’s what that exchange of letters was about.

Mr. Peter Tabuns: Okay. Were you briefed by legal staff on your responsibilities in this situation and your authority to resist or to be compelled by the minister?

1520

Mr. Jim Hinds: I don’t have a specific recollection, but I’m pretty sure that OPA lawyers were all over giving us advice on this.

Mr. Peter Tabuns: Going back, were you around for the renegotiation of the contract for the Mississauga plant in 2009?

Mr. Jim Hinds: No, I was not. I was the chair of the IESO at that time.

Mr. Peter Tabuns: As the chair, later, of the OPA, you’d be aware that it was the Liberal government of Ontario that instructed the OPA to execute the contract with the Oakville gas plant and for the Mississauga gas plant?

Mr. Jim Hinds: I’m sorry, I’m not personally aware of that.

Mr. Peter Tabuns: Who would you assume would have told the OPA to execute those contracts?

Mr. Jim Hinds: I’m not going to speculate. In fairness, Mr. Tabuns, when I got involved I took the facts as I saw them and the facts that I needed to know. I’m not familiar with the history and I would only be speculating if I went back and did that. It didn’t seem to have any bearing on the facts that we faced at the time we had to deal with this.

Mr. Peter Tabuns: I believe they do, because in fact there’s one body that directs, but I’ll leave your answer as is.

Who do you believe, between the OPA and the government of Ontario, is responsible for listening to the community when they set forth their concerns about a plant or an installation?

Mr. Jim Hinds: Well, the OPA is under statutory obligation to the stakeholder and so I think that in any aspect of the work that we do, we try to develop a strategy for stakeholdering. Having said that, the OPA is under the obligation to make sure that there’s enough supply of electricity for the lights to go on, and so we have a job to do.

Ultimately, in the case of these two gas plants, I think that there is clearly a political, community, governmental imperative where these communities can reach through to their duly elected representatives, and that creates a dynamic that affects us.

Mr. Peter Tabuns: So when the government asks you to site a plant, do you expect that ultimately the government will do the read of the political response to this and ultimately take the decision necessary to reflect the democratic will of the community?

Mr. Jim Hinds: Typically, we don’t site a plant. Typically, what happens is that a need is identified and a directive is issued by the minister to procure power. I think in these circumstances the procurement of Mississauga was done in 2004. It was before the OPA was

created, so the OPA's involvement was an assignment of that contract or that procurement. But I think in Oakville's case, the directive read to procure power in the SWGTA, the southwest GTA, which OPA—again, my understanding was that they set up a process where independent power developers or people who wanted to build the plants would submit proposals, and then the TransCanada proposal at the Oakville site was selected. But that was TransCanada's site selection.

Mr. Peter Tabuns: As you're describing it, effectively the site selection is privatized. An area is designated for power generation. A private company finds a site, comes back to you and says, "We've got a site. We can provide power at this price." You don't site and you aren't actually responsible for the community consultation then.

Mr. Jim Hinds: Well, I think, Mr. Tabuns, you were right on the way that those large gas plants were procured, but we procure a lot of other different types of generation.

Sometimes the siting is inherent; when you're putting a hydro dam on a river, the river is where the river is. Sometimes when you're doing a conversion—for example, I'm thinking of the Atikokan conversion. You're converting a plant that's at a location to biomass; the plant is where it is. There are some other exigencies like that. So I wouldn't say the privatization of all the things that we do in terms of power generation—but in respect of the way that these large gas plant procurements were managed, the answer to your question is yes.

Mr. Peter Tabuns: Okay. Did you ever have briefings on the renegotiation of the Mississauga contract in 2009 between the OPA and Greenfield power?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jim Hinds: Sorry, and—

Mr. Peter Tabuns: Between the OPA and Greenfield power—sorry, Eastern Power developers.

Mr. Jim Hinds: In 2009?

Mr. Peter Tabuns: Yes.

Mr. Jim Hinds: I wouldn't have any knowledge of that. I was not on the board at the time.

Mr. Peter Tabuns: Do you know—no, you wouldn't know.

Interruption.

Mr. Peter Tabuns: I think that may be us.

The Chair (Mr. Shafiq Qaadri): You have 40 seconds, Mr. Tabuns. Use it well.

Mr. Peter Tabuns: In the time after you were appointed chair, did you have discussions with members of the government about the Oakville cancellation and the arbitration?

Mr. Jim Hinds: Yes.

Mr. Peter Tabuns: Remind me again when you were appointed.

Mr. Jim Hinds: I was appointed on December 9, 2010.

Mr. Peter Tabuns: So prior to the end of the negotiation period between you and TransCanada, prior to the arbitration—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Thank you, Mr. Hinds. The committee is recessed till post-vote.

The committee recessed from 1526 to 1538.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I welcome you to the committee once again. We resume. Thanks, Mr. Hinds, for your patience.

I offer the floor now to the government side. Mr. Delaney: 20 minutes.

Mr. Bob Delaney: Thank you, Chair. Good afternoon, Mr. Hinds. Thanks for coming today. I'm going to start off with a few questions about the relocation of the Oakville plant.

The committee received minutes from an Ontario Power Authority board meeting on October 7, 2010—I'll let you find it—the day that the Oakville plant announcement was made. In the notes, it states, "Mr. Andersen further advised that the Ontario Power Authority had concluded that the latest information gathered on the current status of the electricity system supported the decision. When the need for this plant was first identified four years ago, there were higher demand projections for electricity in the province. Since then, changes in demand and supply, including successful conservation efforts and more than 8,000 megawatts of new, cleaner power, had made it clear that the plant was no longer required."

In essence, if I understand this correctly, the OPA confirmed that a power plant was no longer necessary in the Oakville area due to changing demand. Is my interpretation correct?

Mr. Jim Hinds: Yes. I will put the caveat on there that I was not on the board at the time of the decision, but having taken reasonable efforts to inform myself of the circumstances around that with my fellow board members, yes.

Mr. Bob Delaney: And that also a transmission solution was, at that time, 2010, possible.

Mr. Jim Hinds: In respect of the Oakville need itself, correct.

Mr. Bob Delaney: Exactly. In terms of the costs associated with relocating the Oakville plant, we're all aware that the memorandum of understanding and the backgrounder for that agreement were made public on September 24. These documents outline the sunk costs and the gas turbine costs, but what they didn't provide were estimates for items such as gas management charges or the savings from the lower net revenue requirement. Our understanding is that this was because those numbers were not available at that time. Is that also correct?

Mr. Jim Hinds: Yes, I think that is also correct. The broad categories of the costs were known at the time—the costs you identified. The costs that were specifically known at the time that the MOU was released were the sunk costs. The others were costs to be determined and to follow.

Mr. Bob Delaney: Then all information that was available at that time in terms of both costs and savings was provided as requested and made public, correct?

Mr. Jim Hinds: Yes. I can't speak for how the government chose to communicate, but in terms of how it went from the OPA outbound, yes.

Mr. Bob Delaney: Okay. Well, that was the question.

Since then, though, we've seen some updated numbers from the Ontario Power Authority. One document dated March 20 of this year, 2013, which has been provided to the committee shows the OPA's estimates for the Oakville relocation to be between \$33 million and \$136 million. As well, when Colin Andersen testified before the committee, he provided two new numbers, one from the OPA and another from an independent review. Could you enlighten us as to why it is that the numbers keep changing?

Mr. Jim Hinds: The numbers keep changing because we learn new facts. At the time when you have to make a decision, sometimes you don't have all the facts. As you do more work, you get more facts and you update your numbers.

I think that collapsing the time series the way you did is difficult, because you have to look back from when the decision was originally endorsed by the board. The MOU was released on the 24th of September 2012, and then a succession of things happened. The first thing that happened that was very significant to the calculation of the numbers is, we stopped being adverse in interest to TransCanada. They had an agreement at that time. Many of the numbers that required the OPA to finalize required the agreement of TransCanada and required their active co-operation. We needed them to tell us what the new plant would look like. We needed them to tell us what the site looked like. We needed to go out to Hydro One. We couldn't make any of those moves until TransCanada was satisfied that they had an agreement with us. As far as I understand, the actual signing of those documents tailed off for months after the 24th of September 2012—the actual execution of those legal documents.

Then a vast amount of work began to try to identify and narrow the ranges of the costs in those broad parameters. I think where it got to in the end is the document that Mr. Andersen spoke to the committee about, which is dated April 29, 2013, which tallies to the end of the relocation cost of \$310 million, of which the \$40 million was the sunk and the delta of the difference. The \$270 million was a long litany of those other costs. And I think it's fair to say that there are still going to be lots of changes in those numbers as they move forward.

Mr. Bob Delaney: So to collapse that down a bit, although it's not the optimal way to estimate the cost of the project, you gave a response based on the best information that you had at the time you were asked.

Mr. Jim Hinds: Perhaps I could put it a different way. If you ask a weather forecaster for a weather forecast, you get a weather forecast. You don't get guaranteed delivery of a sunny day; you get the best judgment of a professional at the time that that person has to make that judgment of what it's going to be.

Mr. Bob Delaney: All of us this spring in Ontario are perfectly familiar with that analogy.

To talk a little bit more about the Oakville relocation and the possibility of litigation around it, I want to ask you a little bit about the decision to renegotiate with TransCanada Energy to find an alternative to the Oakville plant. From the documents that I've seen and the testimony that we've heard so far, it's clear that the best path forward for both the OPA and the government was to renegotiate an alternative site with TransCanada Energy—TCE—rather than to rip up the original contract. Would that square with your observation?

Mr. Jim Hinds: Yes, it would square with my observation. The manifestation of how that played out varied tremendously throughout the course of the dispute.

Mr. Bob Delaney: Okay.

Mr. Jim Hinds: I would just make one admonition: I'm not sure where this phrase "rip up contracts" comes from. This contract was not cancellable, according to its terms. I think "rip up contracts" is perhaps a non-legal expression for "ignore your legal obligations," which, by the way, we being a contracting entity that has 20,000 contracts, is not something that we take lightly.

Mr. Bob Delaney: If the government or the OPA had walked away, ripped up the contract, abrogated the agreement, would it be accurate to say that there was a significant risk of litigation, with the potential being extensive damages awarded against the crown?

Mr. Jim Hinds: Again, I'm not counsel, but certainly the answer to that is yes, and then the admonition also being that if that was done in a way that showed disregard for contractual rights, there's also, as I recall from the lawyers, an opportunity that we could get sued for punitive damages in addition to that.

Mr. Bob Delaney: So in essence the path chosen was one that at the time, with the information you had, was deemed to be optimal in terms of prudence.

Mr. Jim Hinds: Yes. And from an electricity system point of view, I think you put your finger on it before when you referred in the minutes to the demand situation in Oakville. Oakville still needed the power, so the demand situation in the province, including Oakville, was such that we still wanted the plant. The plant had to go somewhere. So the fact that it wasn't situated near where the consumers were is one thing; the transmission solution enabled it to be located somewhere else. But fundamentally, electrons still had to be made someplace. So as our system planners looked at the situation, the plant had to go somewhere.

Mr. Bob Delaney: Let's talk a little bit about some of the Mississauga costs. The government relied on the OPA's approach when it announced its original costing figures on Mississauga. We've previously tabled with the committee an email between Colin Andersen and Minister Bentley's chief of staff on July 13, 2012, three days after it was announced that the Mississauga plant would be relocated to Lambton.

The email to Mr. Andersen states, "As discussed previously we were relying on the OPA to provide the accurate and complete calculations of relocation costs. The relocation costs and the breakdown that were provided is what we are assuming is still correct."

"Can you pls confirm and double check the calculation to ensure that [the] 180"—I guess, referring to \$180 million—"remains accurate."

Mr. Andersen replied, "The OPA stands by the \$180m figure, which reflects monies expended. It reflects costs as we know them."

Although it may be belabouring the obvious, did the government depend on the OPA to provide cost details on the Mississauga relocation?

Mr. Jim Hinds: By the way, I'm not a party to that email, so I will take it as read. Again, in my role as chair of the board, other than being briefed on the conversations about costs, I don't have an intimate knowledge of them.

But I would go back to the same comment that I made with respect to TransCanada, because the issues are quite similar. There are costs that were known at the time the agreements were signed to relocate, and then there were going to be other costs, other categories of costs. We knew they would exist. We just didn't know what they would be and what the net would be. I think Mr. Andersen, in his testimony, used the metaphor of a Polaroid picture. With respect to those other costs, that was an apt metaphor.

Mr. Bob Delaney: So it would be accurate, then, to say that the Ministry of Energy was relying on all of you at the OPA to do your best work and to provide them with your best estimate of the costs.

Mr. Jim Hinds: I think that's fair.

Mr. Bob Delaney: Okay, thank you. What we're very clearly grappling with is that the cost calculations are very complex, which reflects the fact that the whole process in terms of renegotiating a contract, introducing relocations—that, as well, was relatively complex. I would think that one of the things that added to the complexity was the need to maintain some sort of a positive relationship with the proponents through the whole process. If the positive relationship wasn't there, would the probability or the danger of litigation be higher?

1550

Mr. Jim Hinds: I'm going to answer the question in an oblique way. We from time to time have disputes with our contract counterparties. Some of these disputes are quite minor in nature, some of these disputes are quite significant, and I would classify these two as quite significant, in the sense that the counterparties had felt that their contracts were being breached. Once that started, and once the arbitration and litigation processes started, I don't think that the OPA felt particularly like they needed to have a joyful, beneficial, conversational relationship with these two counterparties. We all knew what was going on. These people were well advised, they were well motivated, they were well prepared, and we didn't know whether we were going to litigation or not with them; it was always a default option. I don't think, in respect of these two individual counterparties, that our feelings for each other at the time had much bearing.

Our broader concern was the relationship with counterparties generally. From the stakeholding that I did at the time around these two individual people,

talking to the broader stakeholding community, the broader stakeholding community was concerned for respect for contracts. In their view, they didn't see that these two plants' proponents had done anything wrong. They'd just won an ability to go build a plant, and they diligently applied themselves to doing what they contracted to do, so the broader counterparty community was quite concerned about the way that these plant proponents were treated.

I think that at the end of the day, because the plant proponents agreed to the relocation, they agreed to the renegotiation, they've got their projects and they're off diligently doing their work, we managed to acquit ourselves with the counterparty community generally as to Ontario still being a good place to do business.

Mr. Bob Delaney: So then the long and the short of it is that if you're in the business of power generation and you've got to work with those who provide electricity, it's pretty important to maintain good relationships in general with those entities.

Mr. Jim Hinds: Yes. To put a number on that, it's been advertised that we've spent \$50 billion on the Ontario electricity upgrade system since 2005. You know, \$37 billion of that \$50 billion is under OPA contracts, so that's a lot of money and that's a lot of different projects. So it's important to be mindful of the fact that the providers of capital are out there, and they're on the other end of the contracts.

Mr. Bob Delaney: From your perspective as chair, did the OPA balance its responsibility to ratepayers with their responsibility to provide reliable energy to the system?

Mr. Jim Hinds: In respect of the decisions in—sorry, more clarity on that?

Mr. Bob Delaney: Yes, okay. Throughout this particular process, where clearly you were asked to engage in complex negotiations in a very public way, in your opinion did the OPA balance its responsibility to the ratepayers with a responsibility to provide reliable energy to the Ontario grid?

Mr. Jim Hinds: Yes, I think we did. Was it ideal? No. Could it have been done better throughout this process? Yes. I don't want to make light of the fact that these relocation decisions cost a lot of money.

Mr. Bob Delaney: No, I don't think anybody does, nor is there any inference—

Mr. Jim Hinds: But in the circumstances, given the hand that we were dealt, the role we were trying to look after for ourselves was, could we make a commercially reasonable deal in each of these cases to relocate these plants? Yes, I think we acquitted ourselves.

Mr. Bob Delaney: Chair, how am I doing on time?

The Chair (Mr. Shafiq Qadri): Four and a half minutes.

Mr. Bob Delaney: Four and a half minutes; okay.

In that remaining time, let's talk a little bit about some of the document disclosure. I'd like to ask you a bit about the document search process in response to the estimates committee request for correspondence related to these

two gas plant relocations. At a news conference at Queen's Park in February, you stated that the OPA is in the business of producing power, not documents. What I would take from that—and I appreciate the spirit in which you made it—is that the document search process was quite a departure in terms of normal activities within the OPA. Is that kind of what you meant?

Mr. Jim Hinds: Yes, that's right. And I meant that—yes, and I think I said electricity.

Mr. Bob Delaney: Yes. Okay. I think you acknowledged a number of times during your news conference that because it was such a significant departure from your normal activities and such a massive undertaking, that in fact there were errors and omissions.

Mr. Jim Hinds: I'm sorry; I missed that.

Mr. Bob Delaney: Okay. I'm sorry. During your news conference, I think you may have acknowledged a number of times that because that document search was such a significant departure from your mainstream activities and the scope of it was so large, there were some errors and omissions in the documents provided.

Mr. Jim Hinds: Yes, there were. I would also mention that in my role as chair of the board, we did not have an involvement in that document review and selection process. Our role was truly the typical role of a board, which is oversight. So in our subsequent analysis of what happened during the disclosures, we had a chance to look back through and find that out, and there were a number of missed search terms, there were a number of missed—I've forgotten what they call them; basically employees who had closed down their email boxes and had to go back. So there were lots of those kinds of—the general nature of the errors that were made were of that ilk.

Mr. Bob Delaney: Right. But from your vantage point, again as a member of the board, would it be accurate, then, in looking at the efforts of OPA, to say that the organization's best efforts were made to accurately and fully respond to the document request from the committee?

Mr. Jim Hinds: Yes, the best efforts were made, and in good faith.

Mr. Bob Delaney: At the news conference, you were asked about the opposition's assertions that there had been some sort of orchestrated cover-up by the government, and at the time, to use your words, you said, "I don't think a cover-up is the right way to describe it. We messed up some search terms, and we're trying to get them cleaned up, so I'm not sure what that has to do with the government. This is all us." That remains true to this day, that there was no orchestrated effort to withhold documents?

Mr. Jim Hinds: Yes, that remains true. I would mention, though, in particular, since you're quoting from my transcript—I brought a copy—that was the second question in. The purpose of the press conference at that time was to talk about the third disclosure, which was 54 documents.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jim Hinds: Later on in the press conference, there was a more fulsome discussion about the second

disclosure and others, and what I said in that case was that "we have to review our practices in protocol. That is absolutely clear," from our point of view, "things got messed up; things got miscommunicated and we have to review our interactions on the document stuff for sure." The subtle difference with my second statement is that it also deals with what I think you talk about as the Jesse episode, which is some subset of documents that didn't get disclosed by the OPA that were disclosed by the ministry.

So again, recognizing that's an important issue, I just thought I'd respond that way.

Mr. Bob Delaney: No, it is an important issue, and I thank you.

Chair, I think I'll stop there and pick up it—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

Mr. Fedeli: 20 minutes.

Mr. Victor Fedeli: Thank you, Mr. Hinds, for being here. I have a packet of documents distributed to you; it has your name on the top with a yellow mark through it.

I want to direct you to document 1, the first page. It starts off—I've highlighted a few points for you. This is a Friday, April 15 document. Do you have that one?

Mr. Jim Hinds: Yes, I do.

Mr. Victor Fedeli: Okay. It says, "Can you please set up a call Monday morning with the above group and also include Craig, Deputy Minister Lindsay, Sean Mullin and Jim Hinds." This is from JoAnne Butler. So you're on a call—I presume you were on that call. This is—

Mr. Jim Hinds: Actually, Mr. Fedeli, I don't recall that call.

Mr. Victor Fedeli: You don't recall the call?

Mr. Jim Hinds: No, I don't recall the call, but I do recall a meeting that I had with Mr. Mullin, Mr. MacLennan and Mr. Jamison Steeve. It would have been three or four days after that.

Mr. Victor Fedeli: After that?

Mr. Jim Hinds: After that.

Mr. Victor Fedeli: So this would have been Friday the 15th. When was that meeting, then?

Mr. Jim Hinds: I would have met with them on the 18th. It was, I believe, the 18th.

Mr. Victor Fedeli: Monday the 18th?

Mr. Jim Hinds: I can't recall, but the reason I calibrate it is off a board meeting that we had on the 21st. So I would have met with them before that board meeting.

1600

Mr. Victor Fedeli: Okay—

Mr. Jim Hinds: So in answer to your question, I suspect I was absent; I couldn't make the phone call that's referred to here.

Mr. Victor Fedeli: I understand. This is fine, the fact that you met with him on the 18th. On the 21st, I believe—I'm going to go by memory here for a moment; you'll know as well as I would—there was a counter-offer to TransCanada. This is the \$712-million one.

Mr. Jim Hinds: Yes.

Mr. Victor Fedeli: Did you discuss that with Jamison Steeve at that meeting, or Craig MacLennan or the other names that you mentioned? Was that discussed in that meeting?

Mr. Jim Hinds: In my meeting? No, it was not. The purpose of my meeting with them, at my request, was to find out what was going on from their point of view with TransCanada.

Mr. Victor Fedeli: And what did they tell you?

Mr. Jim Hinds: Not very much. I came out of that meeting unclear that they were in active discussions with TransCanada at all. I know that leading up to the board meeting on the 21st of April, staff had been greatly concerned about the interactions that were happening between TransCanada and the Premier's office. We'd had two prior board meetings, I believe on March 12 and March 29, but those dates may be wrong—but there was a sequence of three board meetings. I undertook to ask the gentlemen involved if—basically try to find out what was going on. Was TransCanada talking to them? I came out of that meeting without a clear understanding that TransCanada was.

Mr. Victor Fedeli: Was it your understanding that TransCanada had been offered to be “made whole”?

Mr. Jim Hinds: That understanding was what I got from staff. There was some language used around the early part of the discussion about “made whole.” I never knew where that was sourced. Where I based most of my understanding of the TransCanada situation on was a letter dated October 7, 2010, from Mr. Andersen to TransCanada Energy, where perhaps more precise language was used. The language was, “As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the contract.”

Mr. Victor Fedeli: Flip over a couple of pages then to document 2. About halfway down you'll see it says—this is from Jennifer Wismer; it's May 31. Actually JoAnne Butler is at the top of this particular document. You're copied on that. Down about in the middle, it says, “This meeting is still tentative as we are waiting to hear back from Sean Mullin as to his attendance. We should know in 20 minutes or so.” Do you know if that meeting did occur?

Mr. Jim Hinds: I do not.

Mr. Victor Fedeli: Do you know if you attended a meeting with Sean Mullin?

Mr. Jim Hinds: No, I did not.

Mr. Victor Fedeli: You did not or you don't know?

Mr. Jim Hinds: I did not attend.

Mr. Victor Fedeli: You did not attend.

Mr. Jim Hinds: On May 31?

Mr. Victor Fedeli: No, this email is on May 31.

Mr. Jim Hinds: Oh. And what—

Mr. Victor Fedeli: It says JoAnne Butler, May 31. It's to Jennifer Wismer, Carolyn Calwell, Halyna Perun, Jim Hinds, David Lindsay and Rebecca Dunning, and it says “Mike Lyle”—the subject is a confidential meeting at 9 a.m. Did you attend that meeting?

Mr. Jim Hinds: I don't believe that I did.

Mr. Victor Fedeli: Is there any way you can ascertain whether you attended that meeting, or if you figure at this point you didn't, you didn't?

Mr. Jim Hinds: I could ask some of the other invitees to the meeting. I could ask them, so I'll undertake to get an answer to—

Mr. Victor Fedeli: Will you undertake to ask them if the meeting did occur without you, and if so, who the attendees were? I'd appreciate that. Thank you.

Over on document 3, there's a little bit of a discussion on arbitration; I've highlighted the few points. It talks about, “What are the commercial reasons why the board would opt for arbitration rather than litigation? If there are none or if they are inadequate, would the board require a directive to enter into arbitration?” Did you ever get a directive to enter arbitration?

Mr. Jim Hinds: I can't recall specifically whether we did or we didn't. This was an email that I sent after reviewing materials at the request of the OPA staff to have an emergency board meeting.

Mr. Victor Fedeli: You didn't like this one, though, did you? I see that you were “struck by the stark concession,” it says, in the recitals. You were giving up too much?

Mr. Jim Hinds: I would go back to the second line of the email, Mr. Fedeli, and quote myself as saying, “I have no expertise in arbitration so treat the following comments accordingly.” And I stand by that. I have no expertise in arbitration.

Mr. Victor Fedeli: You felt that was a stark concession?

Mr. Jim Hinds: In the recitals of the legal defences which might have been available against TCE.

As I recall the board meeting where some of my concerns were addressed, and the board discussed them, there was a fulsome discussion of what those legal defences might have been. I think that, at the end of the day, the board did a business judgement, looked at that and decided that the benefits of arbitration outweighed the strengths of any legal defences that we might have had. I think a lot of that goes back to the seventh letter, that line talking about the “anticipated financial value of the contract.”

Mr. Victor Fedeli: Okay. Flip over to document 4. It's the second page. It's called “2/6.” Do you see that one? It's from the Ministry of Energy.

Mr. Jim Hinds: Yes.

Mr. Victor Fedeli: At the end of the second line, it talks about how the province and the OPA “have agreed to divide between themselves responsibility for the payment of any award.” What does that mean?

Mr. Jim Hinds: I don't know, Mr. Fedeli. This is the first time I've seen the agreement. But it's countersigned by David Lindsay. It's dated August 5, 2011.

Mr. Victor Fedeli: So they've agreed to divide the responsibility. It goes down a little bit to say that the OPA “acknowledged that TCE is entitled to reasonable damages” and “anticipated financial value.”

Go the last sentence, then: “The crown and the OPA agree that it is appropriate to reach agreement on which components of damages should be allocated to the crown and which should be allocated to the OPA.” Now do you know what I’m talking about?

Mr. Jim Hinds: Yes. I think this is probably a manifestation of a discussion about taxpayer/ratepayer—

Mr. Victor Fedeli: Yes, exactly what it is.

Mr. Jim Hinds: —which was an issue for the board.

Mr. Victor Fedeli: It’s an issue for the board. Tell us a little bit about why that’s an issue for the board.

Mr. Jim Hinds: It’s because one of the interests that the OPA protects very strongly is the interest of the ratepayers of the province, because many of the activities that we engage in cost money, so that money indirectly—actually, fairly directly flows through to the bills.

Mr. Victor Fedeli: Okay.

Mr. Jim Hinds: In this case, a decision was made to cancel and relocate a plant. There were going to be costs to that. The question is, who pays: the ratepayer or taxpayer?

Mr. Victor Fedeli: Okay. On that very point, the fact that this is a letter from the government, from the Ministry of Energy, to you, they acknowledge here that they need to divide the costs. It’s very plain: “have agreed to divide between themselves” and OPA. Then, at the bottom, it says that the money’s allocated to the crown and allocated to OPA. The sunk costs of \$40 million, who was that allocated to?

Mr. Jim Hinds: In the end, the sunk costs of \$40 million were allocated to the government, so they were allocated to the taxpayer.

Mr. Victor Fedeli: Yes, they were. So back in August 2011, the fact that the government is saying that they’re going to divide the costs between themselves and you, does this not acknowledge that there are indeed two sets of costs, ratepayer and taxpayer?

Mr. Jim Hinds: There’s nothing in that letter that says anything about sunk costs.

Mr. Victor Fedeli: No, no, I understand that. No, I respect that.

Mr. Jim Hinds: But the concept of the allocation of some costs of the cancellation being borne by the ratepayer and some costs of the cancellation being borne by the taxpayer—it looks like this letter is a manifestation of that.

Mr. Victor Fedeli: I agree with that. Does this not acknowledge that the government would have knowledge that there are going to be two sets of costs: one for them and one for you? At the beginning of the letter and at the end of the letter. This is a letter from the government. It says they’re trying to figure out how much they’re going to pay and how much you’re going to pay.

1610

Mr. Jim Hinds: Mr. Fedeli, I haven’t seen the letter, I wasn’t a signatory to it and I wasn’t a recipient of a copy of it. I think what I would say is that in order for the OPA board to do its work and to try to move forward with resolving and relocating the plants, the OPA board felt

strongly that there needed to be a discussion about who was going to bear the costs of cancellation—

Mr. Victor Fedeli: So you haven’t seen that letter.

Mr. Jim Hinds: What I would say is that this is an acknowledgement of the fact that there needed to be a conversation about who was going to pay for this.

Mr. Victor Fedeli: So you haven’t seen this letter?

Mr. Jim Hinds: No.

Mr. Victor Fedeli: You have not seen this August 5 letter?

Mr. Jim Hinds: That’s correct.

Mr. Victor Fedeli: It’s from the Ministry of Energy to Colin Andersen, the CEO of Ontario Power Authority.

Mr. Jim Hinds: Yes. So I’m very sure Mr. Andersen would have reported, in his report to the board, that we had some—he would have characterized this letter in a way that would have said, you know, we have an agreement to have a discussion about the allocation of the costs of cancellation.

Mr. Victor Fedeli: Go to page 6 of 6, then, and we’re still on document 4. Now we’re at a resolution of the board of directors of the Ontario Power Authority, of which you’re the chair. The first bullet point: “an agreement for the arbitration” etc., “in accordance with the parameters described in” this letter of “August 5, 2011 presentation to the board of directors.” So the board did indeed see this letter. The next bullet says: “an agreement with Her Majesty the Queen in right of Ontario addressing the division of liability”—they’re back to that split again.

Were you away for this particular presentation to the board?

Mr. Jim Hinds: No, we had a telephone board meeting to do this. I was present at that board meeting—

Mr. Victor Fedeli: Okay. So you’re voting. You made a resolution. This is, “Be it resolved that.” You acknowledge this August 5 letter that, sadly, you mention that you haven’t seen, but you’ve gone ahead with a resolution based on that letter, and now you’ve decided on how to split up the costs.

Mr. Jim Hinds: I don’t think there was a decision made on how to split up the costs. I think the decision—

Mr. Victor Fedeli: But there was a decision on a division of liability. You’ve decided on what to do about this letter at that board meeting, according to your own resolution of the board of directors.

Mr. Jim Hinds: It’s not—

Mr. Victor Fedeli: You don’t need to protect them. You don’t need to protect the government. We can talk about this.

Mr. Jim Hinds: I’m sorry?

Mr. Victor Fedeli: We can talk about this August 5 letter. It’s here; it’s in your board that you’ve seen this letter. So we can talk about this, the division of liability. You can do that.

Mr. Jim Hinds: Yes, I’d like to.

Mr. Victor Fedeli: Have you seen that letter or not, do you think?

Mr. Jim Hinds: I have not seen the letter.

Mr. Victor Fedeli: Yet you voted a resolution on it.

Mr. Jim Hinds: A resolution of a board often contains cross-references to vast legal documents, because management needs to be delegated the authority to—

Mr. Victor Fedeli: It's not a vast legal document. It's a simple letter that says, "We're going to divide the two."

Mr. Jim Hinds: You should have seen the arbitration agreement.

Mr. Victor Fedeli: I'm sure there are other agreements. I know that you're in the business of producing paper.

This is a simple letter, but you're voting on what to do about it here. So my point is that both you and the government knew there were costs going to be attributed to both of you.

Mr. Jim Hinds: I think that's fair.

Mr. Victor Fedeli: That's fair. That's fair.

Go to document 6, if you would, please. In those minutes from that August 5 meeting—this is John Zych:

"Jim Hinds' issue with the minutes of August 1, 3 and 5 was not that they were incorrect in any respect but that they dealt with the proposed arbitration of the ... dispute, a fact that we had agreed to keep silent." It goes on to say that you wanted to keep that fact confidential.

What was it you didn't want out, or why?

Mr. Jim Hinds: My recollection of my concern at the time was that TransCanada was a publicly traded stock and that there had been a number of questions in their regular quarterly earnings conference calls about the status of the Oakville generating station.

We have agreements with TransCanada about keeping things confidential, and I wanted to make sure that we didn't inadvertently put somebody in the position of insider-trading this thing.

Mr. Victor Fedeli: We've had other sworn testimony that says that it was the request from the government to keep that out of the public eye. Is that part and parcel of this, or are you independent in that—

Mr. Jim Hinds: I have no idea. All I was concerned about at the time was the inadvertent release of non-material public information.

Mr. Victor Fedeli: So it's back to that August 5 meeting, where we talked about that letter.

I want you to jump towards the end here now. We're at PC doc 12, and it's a meeting of the board of directors. This is your board; it says you were present. We received all of your board minutes—and this will be just a little disjointed for a moment.

Page 2 of 5, down in the middle: "Michael Lyle discussed changes that management was recommending to the" Ontario Power Authority's "agreement with TransCanada Energy ... for the arbitration of its dispute" etc. This had been going on now for weeks, months; we're at the arbitration stage, okay? This is January 18, 2012.

All the way through—in fact, earlier in the discussion, Mr. Delaney had said to you, "The plant was no longer required. We don't need the power." You talked about, in your opening letter, that it would have been needed, in the crisis from 2004 to 2007—but "doing it when supply

is in good shape is quite another." But Mr. Delaney talked about the fact—I have a quote here—that "the plant was no longer required" as the reason that you were cancelling the plant. This is Oakville now. This was just a few minutes earlier, in his question to you.

I've read your board minutes from top to bottom. Nowhere in them does it ever talk about a relocation of a plant. It's all about cancelling the Oakville plant. It's all about arbitration. And all of a sudden, if you go to page 5 of 5 on document 12—now we're into February 15. So we've gone from January 18 all the way up to there. Nowhere, not even one time, does it say "relocation" or "new plant." It's always arbitration versus litigation. It's always cancellation. In this February 15 document, for the first time ever, I saw the words—well, I'll read it: "Mr. Michael Killeavy advised the board that the OPA, Greenfield South Power Corp. and Ontario Power Generation were negotiating a plan to (a) relocate ... and (b) potentially"—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: Thank you. "Mr. Amir Shalaby reported that the OPA was engaged in multi-track discussions ... for Greenfield South and the Oakville" generation. That's the first time we'd ever seen "find new locations" for Oakville. That's February. Not once did we ever see that before—

Mr. Jim Hinds: Mr. Fedeli, I'd have to review the minutes. But in deference to the fact that you're short on time, what I'd suggest is, go back to the minutes of April 19, 2011, where we talk about the \$712 million offer and the proposal; and also the minutes before that, where there's talk about relocating the plant to Kitchener-Waterloo as a peaker. So I think—

Mr. Victor Fedeli: But as a peaker plant; I understand that. But we're now talking about building a 900-megawatt plant, as far away from Oakville as you can, when Mr. Delaney has just finished saying that the plant was no longer required. I'm trying to get—

Mr. Jim Hinds: Relocation—I can speak with confidence about—

Mr. Victor Fedeli: But I'm trying to get from—how did we get from, "We no longer need the power"—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Tabuns: 10 minutes, beginning now.

Mr. Peter Tabuns: Mr. Hinds, maybe I've missed something in all of this. The OPA, the board, cancelled the Mississauga plant, but it doesn't appear that, legally, you had to do that. Am I misunderstanding this? Legally, did you have to cancel that plant? Were you compelled?

Mr. Jim Hinds: I think that the board heard the government's change of policy with respect to the location of the Greenfield plant. It watched the political, governmental and community processes unfold, and, having seen that, it made a decision, given that we were the plant counterparty: Do we go to litigation or do we try to engage in discussions to relocate the plant?

Mr. Peter Tabuns: Or do you just leave it as is?

Mr. Jim Hinds: As I said in my opening remarks, we accepted the government's decision, and then we moved

to the next mode, which was defending against litigation or attempting to renegotiate the contract.

Mr. Peter Tabuns: So the government made its decision, and you had an option to accept or not accept their decision?

Mr. Jim Hinds: Yes.

Mr. Peter Tabuns: Did you have anyone in your board say that this was going to cost an awful lot of money?

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Mr. Jim Hinds: Well, I can't recall the specific board conversations. The way that governance works is that minutes speak for the board. I think that all the directors would have been concerned that this was going to cost a lot of money, and the question would be who was going to pay for it. I think that the genesis of that discussion—sorry, the upshot of that discussion was an exchange of letters between Minister Bentley and the OPA, addressing those very issues.

Mr. Peter Tabuns: What was the legal status of those letters?

Mr. Jim Hinds: Well, I am not a lawyer. I don't think the OPA could sue the government. But I think they were the basis for a discussion on and an acknowledgement by the government that there were going to be costs to the cancellation, and that those costs were going to have to be shared between the ratepayer and the taxpayer. I think we took it as an acknowledgement and proceeded to pick up our tools and try to do the best job we could in very difficult circumstances.

Mr. Peter Tabuns: So in the end, you took that letter as your legal direction.

Mr. Jim Hinds: I think in the end, we decided that we wanted to try to relocate the plant. We had a role to play in that relocation, being the contract counterparty, and we had some vital interests to represent, namely the ratepayer interest and the system interest in getting the plant in a good location. So we continued to move along in the discussions and the negotiations involved in relocating the Greenfield plant.

Mr. Peter Tabuns: Have you ever started a plant with just a letter from the minister, saying, "I'd like a plant"?

Mr. Jim Hinds: Well, we've started plants and processes for them with directives. But this is an unusual situation.

Mr. Peter Tabuns: I agree.

Mr. Jim Hinds: This isn't a normal course of business. A significant problem has arisen with respect to a contract counterparty, where there is already cement and iron in the ground. We're trying to work through a difficult situation to get a resolution that's the best that's possible in the circumstances.

Mr. Peter Tabuns: When we were looking at documents from the Ministry of Energy, they indicated that as of March 2011—this is six months before the plant was cancelled—the OPA and Greenfield agreed to a new operational date, the third quarter of 2014. Do you know if, in the spring of 2011, you had any inkling that this plant was going to be cancelled?

Mr. Jim Hinds: No, I didn't. I can't recall precisely, but there were regular updates to the board on almost all the files that we work on at some point in time, usually delivered through the chief executive's remarks. So I can't say for sure that it wasn't raised that there was some ambiguity in the timeline or whatever. I just don't recall.

Mr. Peter Tabuns: But to the best of your recollection, as of the spring of 2011, you thought this plant was going to go forward.

Mr. Jim Hinds: That would be correct.

Mr. Peter Tabuns: And then this morning, Minister Broten said that in June 2011, the Minister of the Environment said that he was going to be reassessing the environmental factors related to this plant. Was that something that was visible to you and your board, that would give you an inkling that this plant was in trouble?

Mr. Jim Hinds: I don't recall a specific reference to that.

Mr. Peter Tabuns: Prior to the call from Chris Morley the day before the public announcement, did you have any inkling that this plant was in trouble with the government of Ontario?

Mr. Jim Hinds: No, though I would say I did have a call with Mr. Morley in late July 2011 in respect of, I think, other energy matters. Mr. Morley asked me if the plant was still needed. I recall the conversation because I went back to the OPA to check, and the answer I was given was, "The plant is still wanted." So I phoned back to Mr. Morley and delivered that answer: "We want the plant."

Mr. Peter Tabuns: What's the difference between "want" and "need" in this circumstance?

Mr. Jim Hinds: It's probably not different than in any other circumstance. All I could speak to was the OPA's position, which is we wanted that plant. It was well located, we thought, near the users of electricity. It was quite advanced in its construction. We wanted that plant in that location.

When the decision was made not to put the plant in that location, we still wanted the plant on the system. So that gave us impetus for trying to renegotiate successfully a relocation of the plant.

Mr. Peter Tabuns: Okay. Just a few other questions here. The settlement offers made to TransCanada after things came apart with the Kitchener–Waterloo plant—so we're now talking about the spring of 2011. The OPA made two offers, I believe, to TransCanada Enterprises. Do you remember those offers?

Mr. Jim Hinds: Yes. I would be careful about the use of the word "offer"; offer is something that typically can be accepted. The discussions and the proposals around those offers were not capable, inherently, of being accepted; they were proposals.

So there was a series of three board meetings that we had in March and April where we were trying to grapple with this file—what's going on here; who's talking to who; issues that have been asked already of me in committee: you know, what does "make whole" mean, what does "financial value of the contract" mean.

As the board and management tried to grapple with where we were, there was some active discussion with TransCanada—the discussions with TransCanada, as far as I understood, were being done by OPA staff, and TransCanada was being largely non-responsive. So I think there was a series of proposals that were talked to, or about, to TransCanada to try to get them to react to, and one of them was a KW peaker—

Mr. Peter Tabuns: Right, which fell away.

Mr. Jim Hinds: Well, it fell away for two reasons. I think the first is that it didn't look like it would deliver enough value to TransCanada for what they thought they might have been owed. Now, I'm using this advisedly because I never talked to TransCanada.

The other reason the KW peaker fell away was because of some siting concerns. It wasn't clear to the board that this siting for the proposed KW peaker was going to be an easy thing to accomplish. The concern was that if it did move forward a couple of years and then subsequently failed, where would that leave us in this dispute with TransCanada?

The proposal that was referenced in the board materials, I think it was April 19, was looking at various different options and damages claims: Let's see if we can at least agree—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jim Hinds: —on an overall number between TransCanada and us to see how far apart we are. In the end, we never did.

Mr. Peter Tabuns: Okay. I just want to go back quickly to the question of consultation with regard to Mississauga and Oakville. We touched on it, but I just want to be clear. Once they've made a proposal and you've accepted the proposal, really, any public consultation is irrelevant? Is that not the case?

Mr. Jim Hinds: Oh, I think the process shows quite the contrary. I think that what actually unfolded shows that—and it's an area, by the way, I'm not expert in, in terms of municipal off-siting, environmental action. I think that all of those things, that's when the action starts.

Mr. Peter Tabuns: That's a very expensive way to do a process. You sign a contract which ties you into very substantial penalties if you violate it, and then—not consultation in this case—public response drives an agenda. It puts us—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. Last round, Mr. Hinds. Just to follow up on some comments during your discussion with Mr. Fedeli regarding the contract that the two of you were discussing: That document was generated August 5, 2011, right?

Mr. Jim Hinds: I'm sorry, is this the letter—?

Mr. Bob Delaney: This will be his—

Mr. Jim Hinds: PC doc—

Mr. Bob Delaney: PC doc number 4.

Mr. Jim Hinds: Sorry, give me a moment. Mr. Delaney, it appears to be a letter dated August 5, 2011, to Colin Andersen, from David Lindsay, countersign.

Mr. Bob Delaney: And the date of the relocation was the end of September of that year?

Mr. Jim Hinds: This would be the relocation of Oakville?

Mr. Bob Delaney: Of Oakville.

Mr. Jim Hinds: Yes, I think September 30.

Mr. Bob Delaney: Okay. That's all. Thanks.

Just to talk a little bit about commercial sensitivity now. Many of the documents that we're talking about were produced as a result of that motion passed in the estimates committee in May 2012. At the time that the requests were made, you were obviously aware that some sensitive commercial negotiations were ongoing with both Eastern Power and TransCanada.

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Mr. Jim Hinds: Yes.

Mr. Bob Delaney: Okay. In fact, Colin Andersen wrote to the committee on May 30 in response to the motion. The letter in part says, "The provision of correspondence to the committee related to these two matters would disclose material which is legally privileged and has been provided by other parties in confidential, without-prejudice negotiations. Such disclosure is likely to significantly prejudice the position of the OPA and the province in the ongoing, highly commercially sensitive negotiations and in the current litigation."

Would it be fair to say that potentially releasing documents to the public at that point of time may have increased the costs to Ontarians and that the OPA and the Ministry of Energy would then have had a responsibility to protect taxpayers while also balancing that with the need to be open and transparent?

Mr. Jim Hinds: Yes. I would think that's more than fair to say. I think Auditor General McCarter had used a poker metaphor, so I'll pick it up. At that particular time of estimates, we were in commercial negotiations with Greenfield to try to relocate the plant. They had their set of cards; we had our set of cards; the government had its set of cards. In effect, that disclosure order would have said—it's like a dealer walking into a room and saying, "Put your cards on the table."

Our frank assessment of our strengths and weaknesses of our case, our frank assessment of the strengths and weaknesses of their case—all of that would have been visible to a party that we were engaged in litigation with, and we wouldn't have seen anything from them. It was a very potentially dangerous situation for us on behalf of the ratepayers and the government on behalf of the taxpayers.

Mr. Bob Delaney: Okay. Thank you. I'm just asking the Clerk to pass around a copy of a letter the committee received this morning from TransCanada Energy in regard to confidential information. They state—that's the part at the bottom that's highlighted in yellow: "If bidders in such processes cannot be confident that their sensitive information will be kept private, they may become reluctant to participate in future processes resulting in a loss of competitiveness and higher prices for Ontario taxpayers."

Those are their concerns from the other side of the equation. You've expanded a little bit on that. Would you care to elaborate on the release of confidential information through this committee and what consequences that might have for Ontario taxpayers?

Mr. Jim Hinds: Sure. They were actually two different issues, Mr. Delaney. The first issue was the actual impact on the taxpayer and ratepayer of disclosing our negotiating situation in a litigious environment. This issue raised by the TransCanada letter which I'm just reading—the highlighted section which you read is a slightly different issue which is equally valid in our view, which is that people prepare their business plans and they accept our proposals based on an assumption that we're going to hold things secret. We enter into confidentiality agreements with these people. Whether that relates to the way they finance their projects or that relates to the engineering design of the turbines or relates to other proprietary techniques that they may have in providing power, at the end of the day they feel that if they respond to our request for proposals and it's a competitive price, they're not going to find all of their information out there in the public realm. They believe in that and they rely on that. So we guard that very jealously.

Mr. Bob Delaney: Okay. Thanks. You're correct. Those were two different negotiations, but it was interesting that the same point was being made by both the OPA and by the proponent, albeit in different circumstances, but both felt the need that when commercially sensitive information is exchanged, it has to be contained at least for the period at which the information is sensitive or the contract is being negotiated.

Several witnesses have testified before the committee regarding the meetings between the Premier's staff and TransCanada Energy. Their testimony seems to line up with notes that we've seen from interviews with you and your colleagues on the file. For example, Jamison Steeve told us, "My discussions with TransCanada were exploratory in nature." Sean Mullin confirmed, "We were not authorized to ... and we did not engage in" any negotiation. Chris Breen from TransCanada confirmed that they were not negotiating directly with the company.

We also know that no offers were made and no deals were reached during these meetings. The former deputy to the Minister of Energy, David Lindsay, testified, "I don't think they actually had a deal.... why were we going through all this process?" Is that your recollection as well? Did they stay within those parameters?

Mr. Jim Hinds: Mr. Delaney, they did not make me aware of those parameters, so I did not know they had those parameters in my meeting with them. But I saw no behaviour from them in that meeting that was inconsistent with what they said. I did not see evidence of close engagement between the Premier's office staff or any of the people in the meeting that I was in and TransCanada.

My take-away from that, as Chair of the OPA board, was probably that TransCanada was playing a divide-and-conquer strategy at that particular point in time: If they heard something from the OPA that they didn't like,

that they were probably pretending or bluffing a bit. They had access to different people. I treated that as a distinct material possibility and one of the—I think you saw from that, the engagement was, "Okay, well, let's find out how far apart we are from these guys." In any event, the negotiations went nowhere and we ended up in arbitration.

Mr. Bob Delaney: Okay. Thank you. I think we're almost wrapped up. I'd just like to ask you about Minister Chiarelli's request that the OPA and the Independent Electricity System Operator work together to develop recommendations on improving the siting process moving forward. Of course, this review is going to reflect any recommendations made by this committee. Can you give me some of your thoughts on how this review might take place and any recommendations you might have from your observations thus far to the committee as we undertake that review?

Mr. Jim Hinds: I don't want to prejudge the very good work that the OPA staff is probably already going on this and hasn't yet had time to inform the board chair of, so I will make these comments in a personal capacity. Please accept them in that capacity only.

We have a disconnect. We don't have a consistent pattern of municipal planning that provides for electrical generation and transmission. You can go to a municipality and say, "Show me your plan." Some have it in there; some don't. That's a problem for us, who are trying to keep the lights on for everybody.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jim Hinds: That's a problem for us. We're trying to keep the lights on for everybody. We need to know that we can get electrons to people, even in those municipalities where there's absolutely no provision for electrical generation or transmission. I think one of the things I'd like to see out of this process, just in my personal opinion, is trying to reconcile that, trying to come up with an overall energy plan for the province. We've had several of them and they've worked very well. They need to be updated with, how does that actually play out for people in the municipalities who want to flick their switch on the wall and have electrons come out on the hottest day in the summer and the coldest night in the winter?

Mr. Bob Delaney: Thank you very much, sir.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Mr. Hinds, we are now going to switch from Oakville entirely to Mississauga here, where, in this particular case, there was an intention to relocate.

On document 7—although you don't really need to follow it, I'll just read a couple of points from it—it talks about how the OPA received a letter from the Ministry of Energy talking about the government's intention to relocate the plant. Then it goes on to say: "The letter is not a directive under the Electricity Act, 1998 and as such, while it is a statement of the government's intention to relocate the plant, it is not legally binding."

I know Mr. Tabuns started to talk to you about this, but I want to spend a bit of time on this. Why did you do it, then? Why did you go ahead and cancel and relocate the plant when you had no legal obligation to do such a thing?

Mr. Jim Hinds: Well, I think the OPA generally implements the policy of the government of the day in respect of electricity, so I think our bias is to try to be helpful in doing that.

I think in this particular case, if we had said, “No, we don’t want to be involved in this,” I think that there were only a couple of other options, one of which was legislation. I guess the Legislature could have gotten together and passed a bill, and I guess that bill would have been required to speak to the damages.

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In our experience, given that we deal with so many contracts and so many people, the last time I recall that happening was Bolivia, when they nationalized the tin mines. It’s difficult, given that we want to keep a good reputation in the global community and we want to keep capital flowing into Ontario for these projects. If you’re in the same food group as Bolivia, it’s not a good thing.

Mr. Victor Fedeli: Bolivia, because they cancelled contracts?

Mr. Jim Hinds: It was the tin mines. They nationalized the—

Mr. Victor Fedeli: No, I understand that, but I don’t quite get the parallel there. We’re not talking about going ahead and cancelling. I’m talking about why you did it when you aren’t legally obligated to.

Mr. Jim Hinds: Yes, because we thought that in the interest of trying to keep capital flowing that we wanted—and we also, frankly, had our obligation to make sure that the contract counterparty was treated fairly. We did nothing wrong.

Mr. Victor Fedeli: Who is your fiduciary duty to, the Liberal Party or the ratepayers of Ontario?

Mr. Jim Hinds: As a director, our fiduciary duty is to the OPA. The OPA, under the Electricity Act, has a variety of different objects. As I mentioned at the outset, depending on the question that we’re asked, our duties can shift a little bit. In terms of things involving environmental consequences, we actually have a duty, I think, to the citizens of the province.

But in respect to the cost matters—

Mr. Victor Fedeli: I appreciate that you have that. It says in your opening letter that you’ve received 64 directives and 11 letters, but you had no directive to do this.

Mr. Jim Hinds: Well, we received the original directives on an assignment. We received an assignment of the original Mississauga south plant from the person who procured it, which is the Ministry of Energy. I think that happened in 2005 when the OPA was created. The ministry had done a procurement before the OPA existed, so they assigned the contract over. We had assumed the role of contract counterparty there, so I’m not sure whether that came originally as a directive or whether it was just a straight contractual assignment.

Mr. Victor Fedeli: In that briefing note it says: “This letter is not a directive ... and ... it is not legally binding.”

If you go to page 2 of 2—who’s Michael Costello, by the way? I don’t know who that person is.

Mr. Jim Hinds: He’s a valued director on the OPA board. He’s the chair of my finance and audit committee.

Mr. Victor Fedeli: He says: “I’d appreciate understanding why a directive cannot be issued to cancel/move this project when we ... have ... directives in a wide variety”—why wouldn’t the government give you a directive?

Mr. Jim Hinds: To the best of my recollection—and again, I would defer to Mike Lyle, who’s the lawyer here—once the procurement had been initiated, I don’t think that a government directive can be issued to us to terminate the progression of the procurement once it’s contracted. In other words, I don’t think it was legally available. I think that we were the contract counterparty and had to go with it.

Mr. Victor Fedeli: If you go to document 8, the next page, third line down:

“The OPA was subsequently directed to enter into a contract” etc., etc.

I’m going to whip through about four pages here. I’m just working on the changing of wording.

Page 2 of 2, the third last line of the second last paragraph: “The government supports the OPA’s decision to terminate the contract...” It’s a draft from Minister Bentley; it never made it into the—go two more pages now into document 9, 2 of 2.

This is the final letter now: “The government supports the OPA’s decision to not proceed with the contract...” They hung this on you. Was it your decision not to proceed with the contract, or were you told not to proceed with the contract?

Mr. Jim Hinds: I’m sorry, I’m missing the subtleties of the drafting. I’m just working with the final documents.

Mr. Victor Fedeli: Was it your decision? So it was the OPA’s decision—it’s all on you?

Mr. Jim Hinds: I think it’s an accurate statement of what we were just talking about, which is that I don’t think the government mechanically could direct us or terminate the contract.

Mr. Victor Fedeli: So it was your choice, then. You’re the guy. You chose—

Mr. Jim Hinds: We were the contracted counterparty, and we weighed the different decisions as a board, and we decided that renegotiation was a better option than legislation.

Mr. Victor Fedeli: It used to say that. It used to say “negotiate an arrangement to relocate the plant or ... contract.”

This is the sentence that was put in: “The government supports the OPA’s decision to not proceed with the contract...” So it was your decision, then. You decided that, not the government.

Mr. Jim Hinds: No. I mean the government made a decision that they did not want the plant to proceed.

Mr. Victor Fedeli: Then why do you think they said you did it? It's a letter to you from the minister: "The government supports the OPA's decision to not proceed with the contract..." Is that misleading?

Mr. Jim Hinds: I think if you read the paper, it was the government's decision, and if you read the testimony of the former Premier, it was the government's decision not to proceed with the plant. I think, as mentioned, the government did not have the legal ability to terminate a contract once a directive had been issued or once the original procurement, in this case, had been done.

Mr. Victor Fedeli: So I want you to whip over to document 11, then, down at the bottom. This is from Steve Orsini in finance: "Vapour Lock-Mississauga ... Recover \$270 million from the rate base." Do you have any idea what he's talking about?

Mr. Jim Hinds: No, though that number looks—

Mr. Victor Fedeli: Yes, if you take the delta, right?

Mr. Jim Hinds:—suspiciously like the difference between \$310 million of costs in the OPA note dated April 29, 2013, and the \$40 million in sunk costs. I can't speak to that, but that number looks the same as that calculation would be.

Mr. Victor Fedeli: Yes, I felt the same way: \$310 million minus \$40 million equals \$270 million, so I'm going to have to ask them. This document isn't even a month old; this is one of the documents we recovered that talks about different things that are coming up. One of them is:

"Jim Hinds, Colin and Serge

"—Meeting today to discuss NRR."

Did you have that meeting?

Mr. Jim Hinds: No, I did not.

Mr. Victor Fedeli: It says, "Highest NRR that the board can live with." Do you know anything about what they're talking about here? This document isn't even a month old.

Mr. Jim Hinds: No, I don't.

Mr. Victor Fedeli: Okay. Then it says, "Prichard, Hinds and Colin are meeting tomorrow to deliver a message that we need an agreement for a relocation." Do you know what that is?

Mr. Jim Hinds: No idea. Are the dates on these right? Because around that kind of time, about 2012, would have been when there was a discussion—

Mr. Victor Fedeli: I'm telling you there are other things in this document, which you don't have there, that tell me this is a very recent document—incredibly recent—and the date is May 7, 2013.

Mr. Jim Hinds: "Greenfield is doing their due diligent and may not get financing?"

Mr. Victor Fedeli: That ties into the next article I have, today's Sarnia Observer, where it says, "Company Considering Two Sites in St. Clair..."

I've got to ask you: Is there a problem? Greenfield haven't picked a site now? Is there a problem with the site?

Mr. Jim Hinds: No. The deal with Greenfield, as finally negotiated with Greenfield, gave Greenfield the

option to search for a different site. But at the end of the day, Greenfield had the ability to build their facility on lands provided by Ontario Power Generation.

Mr. Victor Fedeli: There's an article in the Sarnia Observer today saying that they're still looking at sites.

Mr. Jim Hinds: It may well be. As I recall, they had at least a year from the time of signing the settlement and the renegotiation to make that determination. It might, in fact, have been longer.

Mr. Victor Fedeli: It says here, "Greenfield is doing their due diligent"—spelled wrong—"and may not get financing." Do you have any idea about "Prichard, Hinds and Colin are meeting tomorrow..."?

Mr. Jim Hinds: I have no idea, as I said. Rob Prichard was a lawyer at Torys who was engaged in the Greenfield matter around this time in 2012. Subsequent to the solution or the resolution of Greenfield, I don't think Torys has been involved—

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Fedeli, regrettably your time has expired.

Mr. Hinds, I thank you for your presence before the committee. You are respectfully dismissed.

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qaadri): There's a bit of an issue here. It may not be coherently stated, but here goes.

You have been in receipt of numerous documents, the last round of which was a USB key, one per caucus, distributed last time. We have also received, now, 13 boxes from the Ministry of Finance. We had, as you know, previously agreed to undertake to keep confidential documents within those, confidential.

By courtesy of the Premier's office, cabinet office and the OPA, in this whole cascade of documents, the confidential ones are singled out: These ones are confidential, these ones are non-confidential. The ones that have been received from the Ministry of Finance, because of time pressures, are not singled out, meaning confidential is mixed with non-confidential.

The Clerk would like to (a) receive direction, (b) not be the one responsible for separating them, and (c) send them back to finance, saying, "Separate them." That would include the 13 boxes we have just received recently and the USB stuff you got last time.

Interjection.

The Chair (Mr. Shafiq Qaadri): I'm not going to repeat this.

Mr. Peter Tabuns: Sorry, no, the last sentence.

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The Chair (Mr. Shafiq Qaadri): I don't know what the last sentence was. It just came out as is.

Yes, Mr. Yakabuski?

Mr. John Yakabuski: Okay, so I wasn't listening completely—

The Chair (Mr. Shafiq Qaadri): That is a well-established tradition, Mr. Yakabuski.

Mr. John Yakabuski:—but that's not completely unusual either.

So finance sent them over unsorted, because there was a time commitment to get them to us by a specific date?

The Chair (Mr. Shafiq Qaadri): Yes, because it was two weeks.

Mr. John Yakabuski: Okay. So did they not make an attempt to contact the committee and say, "We're having a problem sorting. Can we get a new directive?" No.

The Chair (Mr. Shafiq Qaadri): There's no such thing. You can't do a mid-flight directive.

Mr. John Yakabuski: You can't?

The Chair (Mr. Shafiq Qaadri): No—

Mr. John Yakabuski: Well, Captain Kirk could.

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. John Yakabuski: Well, Captain Kirk could. I'm sure Bob Delaney could; he's done moon flights. So the problem is, now we've got the documents, but they're not sorted.

The Chair (Mr. Shafiq Qaadri): Thank you.

The Clerk of the Committee (Ms. Tamara Poman-ski): I just want to go on the record. Okay. There's a bunch of documents, so you received a bunch last week, right? And the folders, the ones that said "Confidential"—easy. Figure it out.

Mr. John Yakabuski: It's the finance ones that are not sorted.

The Clerk of the Committee (Ms. Tamara Poman-ski): The finance ones are not sorted. Since last week, I have received 13 boxes from the Ministry of Finance, again not sorted, with the "Confidential," plus I've also received OPA documents. They're all confidential, so that's easy to sort out.

First off, we need direction in terms of if you wanted to still keep those ones confidential from last week, because the committee decided to wait on it—

The Chair (Mr. Shafiq Qaadri): Our recommendation to the committee, so you don't have to belabour this further, is that the Ministry of Finance 13 boxes be sent back to finance, and the USB keys—anyway, you keep the USB keys; we don't care about that—the information on it gets sorted and then re-sent to us.

Mr. Victor Fedeli: That's a little bit of putting the toothpaste back in the tubes.

The Chair (Mr. Shafiq Qaadri): Tube.

Mr. Victor Fedeli: Tubes. For instance, one of the documents that I used today had a line about one of those confidential pieces. I covered it, had the document copied with that piece covered—

The Chair (Mr. Shafiq Qaadri): You redacted it.

Mr. Victor Fedeli: I had to. I honoured the—reluctantly redacted, because we took an honour here. You said we can have that material on our honour, so I did cover the line about the topic.

The Chair (Mr. Shafiq Qaadri): Understood.

Mr. Victor Fedeli: My concern is, those are widely printed—

The Chair (Mr. Shafiq Qaadri): Sure, and we commend you for your conscientiousness, but for you to duplicate that on-the-fly redaction—

Mr. Victor Fedeli: We're going to miss something.

The Chair (Mr. Shafiq Qaadri): —for, by the way, 50,000 documents or whatever it is, is probably not going to be feasible.

Mr. Victor Fedeli: Yes.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns wants the floor.

Mr. Peter Tabuns: Well, just so that I can separate out the two matters. The toothpaste that is still in the tube—the boxes from the Ministry of Finance that you have received—I'm in concurrence that they should be sent back so that the confidential matters—

The Chair (Mr. Shafiq Qaadri): Fine. Done. Is that the will of the committee? Mr. Yakabuski?

Mr. Peter Tabuns: If I can finish my statement, sir.

The Chair (Mr. Shafiq Qaadri): Sure.

Mr. Peter Tabuns: —sent back so that the confidential documents can be separated and so that we get a key with the confidential documents and one with the non-confidential documents.

The Chair (Mr. Shafiq Qaadri): Or they may be sent to you in hard copy, one or the other.

Mr. Victor Fedeli: Well, there's 50,000.

Mr. Peter Tabuns: Yes. I would say it's better to have a USB stick, just simply in terms of searching through. But are you referring, as well, to the two keys that we received previously?

The Chair (Mr. Shafiq Qaadri): Are we referring to the two keys—

The Clerk of the Committee (Ms. Tamara Poman-ski): We are, but let's deal with one thing at a time here, Mr. Tabuns. Let's deal with the ones that I have not even given to you yet.

Mr. Peter Tabuns: Correct.

The Clerk of the Committee (Ms. Tamara Poman-ski): Mr. Tabuns, you want them sent back and you want them separated?

Mr. Peter Tabuns: Yes.

Mr. Victor Fedeli: They're not being redacted. We're going to get all of those documents. Just one will be marked "Confidential" and one won't be, and we'll decide—

The Chair (Mr. Shafiq Qaadri): That's right.

Mr. Peter Tabuns: And they will be, hopefully, kept in a separate file folder so it is easy to identify them, and not marked as confidential and mixed through.

The Chair (Mr. Shafiq Qaadri): Yes, that's the will of the committee.

Comments from the government side?

Mr. Victor Fedeli: So that's on this one?

The Chair (Mr. Shafiq Qaadri): The 13 boxes.

Mr. Victor Fedeli: We're talking about only the one topic, right?

Mr. John Yakabuski: The ones we haven't got yet.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: On the matter of the boxes that we have not got yet, I very much concur with my colleagues: They should go back to finance with precisely those instructions to sort it out and give us some organized—

The Chair (Mr. Shafiq Qaadri): Okay, so that's done. Any other issues?

Mr. Victor Fedeli: Yes. The topics that they had identified as confidential: Can I read those topics? That's not confidential, is it, the letter that we received?

The Clerk of the Committee (Ms. Tamara Poman-ski): The letter, no. It's a transmittal letter. No.

Mr. Victor Fedeli: So in that transmittal letter, it talks about four topics. I don't have it here. It's up in my office, but I know it was Ring of Fire, it was Cisco, it was the Samsung deal and one more.

Mr. Peter Tabuns: Ford.

Mr. Victor Fedeli: Ford.

The Chair (Mr. Shafiq Qaadri): Ford Canada.

Mr. Victor Fedeli: Ford Canada. So are those the topics on these additional 13 boxes, or are those topics identified as well?

Mr. Bob Delaney: I'd like to know the answer to that, too.

The Clerk of the Committee (Ms. Tamara Poman-ski): It was on the letter that I—let me double-check.

Mr. Victor Fedeli: Yes. I'd left those up because we ran; I had to take everything out of there.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes. Cliff's Resources, Ring of Fire, green energy investment agreement, Ford Oakville plant, Cisco Systems—that's per the letter from finance on May 31.

Mr. Victor Fedeli: I would be fine, with the documents we have not received yet, for them to take those back, segregate those, but return all, including those, right? But those will be in our confidential file, so that we can preview and make our own decision on the confidential ones eventually. Is that what we're talking about?

Mr. John Yakabuski: Yes.

Mr. Peter Tabuns: Yes.

Mr. Victor Fedeli: On the 13.

The Chair (Mr. Shafiq Qaadri): Would you prefer that the Ministry of Finance does that or the Clerk?

Mr. Victor Fedeli: Oh, no, that's got to be done by the ministry.

The Chair (Mr. Shafiq Qaadri): All right.

Mr. Victor Fedeli: So that's one. What else did you say you had?

The Clerk of the Committee (Ms. Tamara Poman-ski): We received documents from the OPA, and they're all confidential. So we need direction on that.

Interjections.

Mr. Victor Fedeli: Well, I'm not sure about that one, because everything we got from them they wanted confidential.

Mr. Peter Tabuns: I would ask that we hold that one over to Thursday. I would like to talk to my House leader before we make a decision on that.

The Chair (Mr. Shafiq Qaadri): This in reference to the [inaudible]

The Clerk of the Committee (Ms. Tamara Poman-ski): No, the OPA ones I didn't distribute.

Mr. Victor Fedeli: We don't have those documents.

The Clerk of the Committee (Ms. Tamara Poman-ski): No, you don't have those.

Mr. Victor Fedeli: We need concurrence.

Mr. Bob Delaney: I think again we have some concurrence on that in both cases. I think it would be prudent to hear from the provider of the documents why they are confidential and what are the ramifications of releasing the documents? It would at least give the committee some frame of reference with which it can make an intelligent decision on the confidentiality of documents.

Mr. John Yakabuski: Well, the committee has already ordered them to release the documents. When we receive the documents, that's when we'll make the determination as to how we're going to deal with them.

Mr. Bob Delaney: You don't understand what I'm asking.

Mr. John Yakabuski: That's what we've done with the confidential documents we've received in the past.

Mr. Steven Del Duca: It's not disagreement—

Mr. Bob Delaney: That's not what I'm saying.

Mr. Steven Del Duca: [Inaudible] they provide some guidance as to why they believe they're confidential, not that they—we can still make the determination, right?

Mr. Bob Delaney: Yes.

Mr. Steven Del Duca: Yes. Some advice from them as to why they think—

Mr. John Yakabuski: Fine, fine. But—

The Chair (Mr. Shafiq Qaadri): All right. Though I cannot precisely identify the will of the committee, if the most recently stated will of the committee is the will of the committee, I'll accept it.

Mr. Victor Fedeli: What is that?

The Chair (Mr. Shafiq Qaadri): Well, that's what I can't quite figure out.

Mr. Victor Fedeli: The will of the committee was that we wait till the next meeting to talk about the OPA docs.

Interruption.

The Chair (Mr. Shafiq Qaadri): The electricity is gone now, too.

Mr. Bob Delaney: Well, Chair, in that vein, we're all members of provincial Parliament and we have a responsibility as a committee, first and foremost, to protect the public interest. I think what the essence of the discussion here is that, as members of the Legislative Assembly, we have to be trusted to ensure that sensitive information stays sensitive.

Mr. Victor Fedeli: Yes, we'll get to that.

Mr. John Yakabuski: That's not the debate here.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Tabuns.

Mr. Peter Tabuns: Since we're working through these, for the OPA documents I'd like to hold that decision over till Thursday. If someone from the OPA wants to be here to answer questions we may have, it's probably a useful thing—we may or may not.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Mr. Yakabuski.

Mr. John Yakabuski: If I can condense or give you what I think the will of the committee is, it's that the

documents we have not seen yet from the Ministry of Finance, which the Clerk is in possession of, be returned and sorted by them.

Mr. Victor Fedeli: We did that.

Mr. Peter Tabuns: We did that.

Mr. John Yakabuski: That's right. The documents from the OPA we're going to leave until Thursday to make that decision. That's the will of the committee, as far as I know.

The Chair (Mr. Shafiq Qaadri): Fine.

Mr. Bob Delaney: All right?

The Chair (Mr. Shafiq Qaadri): Now the previous USBs: Shall we figure that one out?

The Clerk of the Committee (Ms. Tamara Poman-ski): No, we haven't.

The Chair (Mr. Shafiq Qaadri): All right. The previous USBs that you have already received are still unsorted.

Mr. John Yakabuski: They're ours.

Mr. Rob Leone: They're ours.

Mr. Rob Leone: We won't be sending them back.

Mr. Victor Fedeli: But we've taken them in confidence.

Mr. John Yakabuski: That's right. Everything we did, the committee—

Mr. Steven Del Duca: You don't want them sorted?

Mr. Victor Fedeli: We will, but in the meantime the ones that we got, we've got.

The Chair (Mr. Shafiq Qaadri): Yes, that's fine.

Mr. John Yakabuski: We're not sending back anything we have.

Mr. Victor Fedeli: We have no intention of sending anything back that we have.

The Clerk of the Committee (Ms. Tamara Poman-ski): I just need direction: Did you want them to be kept confidential, and if they're going to be, how long? Do you know what I mean? I need direction for my office, in terms of when we exhibit stuff and everything. You can defer it and then committee can decide later, but just in terms of further on, I will need direction from the committee on these documents.

Mr. Victor Fedeli: I'm going to suggest, if I can—and I'm just going to do this on the fly—that we ask finance to reissue those, sort it for us, right? Because we're going to want them sorted eventually.

Mr. John Yakabuski: On a key.

Mr. Victor Fedeli: On a key, right? That will also help us in identifying what is confidential or not. The ones that we already have will be—I mean, you can't put that toothpaste back in the tube.

Mr. John Yakabuski: That's right. The reality of keeping the ones we have—we'll know if what we get back from finance is all of the documents.

Mr. Victor Fedeli: Yes, but I'm not worried about that. So it will have to be on our honour. We'll have to continue on our honour that we won't release the sensitive information, and it'll just have—but it's going to be wider than the MPPs, then. It's going to have to be. I

don't make photocopies, 50,000 of them. Somebody's going to have to hit the printer—

The Chair (Mr. Shafiq Qaadri): Are you content?

The Clerk of the Committee (Ms. Tamara Poman-ski): No, I'm not. I'm confused. Sorry; I'm confused.

Mr. Bob Delaney: Would it be helpful to outline some of our options in a subcommittee meeting on this particular—

Mr. Victor Fedeli: Well, we have to move on this. We've got documents floating.

Mr. Bob Delaney: Okay.

Mr. Victor Fedeli: There are documents being printed as we speak. I caught one, saw a word—I saw one of those four confidential documents was in one sentence. I think it's incumbent upon ourselves to make sure that we don't publicly release those documents.

The Chair (Mr. Shafiq Qaadri): So let this incubate for 48 hours until our next meeting on Thursday. Is that suitable?

The Clerk of the Committee (Ms. Tamara Poman-ski): Okay. Before you leave, I need to reconfirm that we're on the same page here. So the documents that I've received from the Ministry of Finance—that was 13 boxes that I have not sent to you. I'm going to be requesting for them to be sent back and they can split them up: confidential versus non-confidential.

The Chair (Mr. Shafiq Qaadri): Yes.

The Clerk of the Committee (Ms. Tamara Poman-ski): The other documents that I received from the OPA that are all confidential—we're agreeing to stand that down until Thursday for a decision.

The Chair (Mr. Shafiq Qaadri): Which means they're not released to you.

The Clerk of the Committee (Ms. Tamara Poman-ski): No, I have them. I'm not giving them—the previous documents I gave to you from Cabinet Office, the Premier's office and then the Ministry of Finance ones, the ones that weren't sorted, we're going to stand down and decide on what to do with those—confidentiality until Thursday. Agreed?

Mr. Peter Tabuns: Fine.

Mr. Victor Fedeli: Understanding that while there are some marked “confidential,” there was some of that confidential material—headlines—interspersed.

The Clerk of the Committee (Ms. Tamara Poman-ski): The Ministry of Finance ones were, yes.

Mr. Victor Fedeli: Oh, yes. So as long as we acknowledge that that is out there.

The Chair (Mr. Shafiq Qaadri): Fine. Do we need to specify the time of sorting done by finance?

Mr. Peter Tabuns: One week?

Mr. Victor Fedeli: Well, that's what got us in trouble the first time.

Mr. Peter Tabuns: That may well be true, but—

Mr. Steven Del Duca: Why don't you make it two?

Mr. Victor Fedeli: Peter, I've got to be honest. We're going through 50,000 that we already have; we can live with another week.

Mr. Peter Tabuns: Fine.

The Clerk of the Committee (Ms. Tamara Poman-ski): They said they would be done—

Mr. Peter Tabuns: Then I'm happy to go with two weeks on the sorting.

The Chair (Mr. Shafiq Qaadri): Two weeks?

Mr. Victor Fedeli: That's why they didn't sort them is because they only had a short—

Mr. Peter Tabuns: No, they got them all. They've done the preliminary search already.

Mr. Victor Fedeli: That's a good point.

Mr. Peter Tabuns: It will be three weeks, will it not?

Mr. Victor Fedeli: Well, do you want to go in a week, then?

Mr. Peter Tabuns: I'll go with two.

Mr. Victor Fedeli: All right. We'll go with two.

The Chair (Mr. Shafiq Qaadri): Is it the will of the committee, two weeks returned?

Mr. Rob Leone: Are we meeting in two weeks?

Mr. John Yakabuski: I have no idea.

Mr. Bob Delaney: We're fine, Chair, with two weeks.

The Chair (Mr. Shafiq Qaadri): Fine. Mr. Leone?

Mr. Rob Leone: I was just going to ask: Are we meeting in two weeks?

Interjections.

The Chair (Mr. Shafiq Qaadri): All right. I think this very fruitful discussion has come to its natural end. The committee is now adjourned.

The committee adjourned at 1704.

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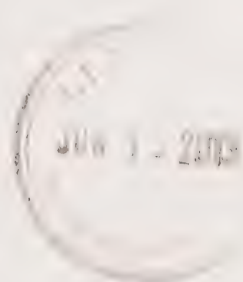
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**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 6 June 2013

Jeudi 6 juin 2013

The committee met at 0831 in room 151.

MEMBERS' PRIVILEGES

MR. ZIYAAD MIA

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy to order. As you know, we're deliberating on energy infrastructure.

I welcome our first witness, Mr. Ziyaad Mia, counsel of the OPA. Mr. Mia, I would invite you to be affirmed by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Ziyaad Mia: I do.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mia. As you know, you have a five-minute opening address, beginning now.

Mr. Ziyaad Mia: Thank you. Good morning. My name is Ziyaad Mia. I am counsel at the Ontario Power Authority and I work in the legal, aboriginal and regulatory affairs division. My responsibility at the OPA is primarily for aboriginal affairs, and I also work on planning and regulatory matters.

I obtained my law degree in 1994 and was called to the Ontario bar in 1996. I am a member of the Law Society of Upper Canada, and I received a master's degree in law in 2005.

I joined the OPA in 2005 in the electricity resources division, where I was responsible for negotiating electricity resource contracts. I joined the legal, aboriginal and regulatory affairs division in 2008.

In addition to my work at the OPA, I am active in a variety of other roles, both professionally, as an adjunct professor at Osgoode Hall Law School, and in the broader community as a member of Human Rights Watch, Canada, a member of the Animal Care Review Board of Ontario, and through work in various charities and community organizations.

As a lawyer, my professional obligations require me to maintain the privilege and confidences of my client, the OPA. The OPA has waived the privilege for the purposes

of my testimony at this committee today. You have that letter from our CEO, Mr. Colin Andersen.

Prior to joining the OPA, I worked in private practice, focused generally on energy law. I also worked for a period of time in the office of the mayor of Toronto.

With respect to the issues before this committee, I had no involvement in the procurement, cancellation or relocation of the Mississauga plant or the Oakville plant. I was involved from time to time in the response to the motion of the estimates committee of May 2012 under the direction and oversight of Michael Lyle, general counsel at the OPA.

Given my focus on aboriginal affairs, document disclosure was not part of my regular duties. I can confirm that the document disclosure request was, in my experience at the OPA, unprecedented in terms of size and scope. You're all aware of a meeting that took place on August 22, 2012, between staff of the OPA and Jesse Kulendran. I was in attendance at that meeting with my colleague Kristin Jenkins. The meeting took place in the boardroom of the Deputy Minister of Energy from approximately 10 a.m. until noon that day.

With that background, I'm happy to try to answer any questions that you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mia. Before I offer the floor to the PC side, as counsel, I'm sure you're well aware, just with reference to your statement about the OPA's waived privilege, as you know, as a justice policy committee of Parliament, we trump that to begin with in any case. We thank you for the waiver.

Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Mr. Mia. We're very pleased to have you here today.

Your last paragraph was about the meeting between the staff of the OPA and Jesse Kulendran from the Ministry of Energy. Who all exactly was at that meeting?

Mr. Ziyaad Mia: Mr. Fedeli, Jesse Kulendran was there; Ms. Jenkins, who you've heard from, was at that meeting; and I was at that meeting.

Mr. Victor Fedeli: No one else was there?

Mr. Ziyaad Mia: No one else was at that meeting.

Mr. Victor Fedeli: To be blunt, we have a "she said, she said" going on here at the committee. One says one thing and one says the other. Can you tell us what transpired at that meeting right from the beginning? How

were you contacted to come, what were you required to do and what happened at that meeting, in your own words? Thank you.

Mr. Ziyaad Mia: I'll try to give you my best recollection of that day, as it was almost a year ago.

In the morning of August 22, 2012, I was at work. There was a voicemail that I checked, and that voicemail was from my boss, Mr. Lyle. He had indicated that there was a need to call Halyna Perun at the Ministry of Energy, who was the director of legal affairs there, and that there was a meeting that he needed someone to attend, and he was asking me to attend that meeting. He had some details: The meeting would happen at 10 a.m. at the ministry and I needed to call Halyna to get some details. That was the voicemail. I scribbled some notes down; I believe you have those notes.

I then proceeded to call Ms. Perun. I don't have the note in front of me, but I believe you have my written notes. She asked me to attend a meeting at the deputy minister's boardroom, fourth floor, Hearst Block, 10 a.m.; to bring our Oakville non-privileged documents with me; "We're going to meet with Jesse Kulendran to talk about the documents," and Halyna indicated that she would try to attend that meeting—essentially. It's not verbatim; those are my recollections from my notes, but that's essentially the substance of that discussion with Ms. Perun.

Following that—again, this is sometime early in the morning, around 9 a.m., and the meeting is to take place at 10 a.m. It was impressed on me that it was an important meeting to be there at 10 a.m. I tracked down Mike Lyle—he was in a meeting with Ms. Jenkins—just to find out some more details, because I didn't know what the requirements of the meeting were or what it was about, other than we needed to go to the Hearst Block and meet in that room and bring our documents. At that point, I found Mr. Lyle and spoke to him for a brief bit. He found Ms. Jenkins. She had agreed to come with me to the meeting. I grabbed the documents, some note-taking material, threw them into a bag and we—

Mr. Victor Fedeli: Just one question: Was Ms. Jenkins requested as well, or did you ask her to come along?

Mr. Ziyaad Mia: I don't remember the exact details, but at the end of the day, she accompanied me to go up to the ministry.

We hopped in a cab because it was urgent to get there, and we went up to the ministry at Hearst Block for that meeting. We went to the meeting in the deputy minister's boardroom. Ms. Kulendran—I didn't know Ms. Kulendran before that meeting. My only interaction with Ms. Kulendran were the two hours on that day. I haven't seen her since. We then proceeded to talk a little bit about the documents. Again, I have some notes from that meeting which I believe you all have, so those specifics I can speak to. For the general discussion at the meeting, I can give you my best recollection.

We discussed a bit about the motion and the approach to the documents. There were concerns that some of our

documents were not responding to the motion precisely. We brought our documents—

Mr. Victor Fedeli: Can you just repeat that sentence?

Mr. Ziyaad Mia: I don't know exactly if I can repeat the sentence to you—

Mr. Victor Fedeli: Your documents didn't—

Mr. Ziyaad Mia: Yes, and to my recollection—this is not a verbatim recollection, but the substance of it is that these documents were not meeting the requirements of what the motion was asking for.

She indicated to us, I believe, that it needed to be in the date range of that motion, it needed to be correspondence and it needed to reference the Oakville and Mississauga gas plants. We had the Oakville documents there, non-privileged. There was a stack of them. I believe Ms. Kulendran said it was half a banker's box. It would probably be accurate to describe it as such. We then walked through those documents, essentially. We had a bit of a discussion about some of the documents. The bulk of the meeting was walking through those documents, page by page.

Mr. Victor Fedeli: On a one-by-one basis?

Mr. Ziyaad Mia: Correct. I know there's a discrepancy in who asked for that. My best recollection is, Ms. Kulendran asked for that.

We had the documents there, and as you know, our documents are sorted by custodian, so—not that there were any documents of mine, but "Ziyaad Mia pile." So we'd pull up a pile, "JoAnne Butler," whatever it was, and we would then walk through those documents, page by page, and apply this approach to determine whether these documents were, in fact, responsive to that approach or not.

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Mr. Victor Fedeli: When you say "apply this approach"—I don't want to put words in your mouth, but does that mean pulling documents out?

Mr. Ziyaad Mia: We didn't physically pull documents out. At this stage, I'm at one side of the table, Ms. Kulendran is beside me—she has a copy of her own of the documents, an exact copy of the documents—and Ms. Jenkins is sitting across the table. Again, we were very rushed here because it was impressed on us that it's important to get this done and walk through this meeting.

I asked Ms. Jenkins to note—I don't know if I asked, but at some point we determined we'd better mark them with the sticky notes, the famous sticky notes. Ms. Jenkins was just writing on notes "no reference to Oakville" or "out." We took those instructions, and she applied them to some of the documents. I believe you have those, so you can see that.

Mr. Victor Fedeli: So these are on the documents—not on Jesse Kulendran's set of them, but on your set of them?

Mr. Ziyaad Mia: On the OPA set.

Mr. Victor Fedeli: On the OPA set, there are sticky notes that say, "This shouldn't be here because it doesn't say this," or—

Mr. Ziyaad Mia: Now, don't quote me verbatim, but I believe some of the sticky notes say "out" and some of them say "no reference to Oakville."

Mr. Victor Fedeli: Sadly, you are being quoted verbatim; you're being transcribed.

Mr. Ziyaad Mia: I know. But in terms of reflecting what is on those notes.

Mr. Victor Fedeli: I understand.

Mr. Ziyaad Mia: I mean, you can pull them up and we can look at them.

Mr. Victor Fedeli: No, I understand, Mr. Mia. Thank you. Please carry on.

Mr. Ziyaad Mia: Essentially, we walk through those documents, we apply those notes to them and then we have a discussion with Ms. Kulendran about what happens next.

Just to back up a little bit, in going up, I didn't know the full extent of what this meeting was about. I was asked to go to a meeting. There were some concerns about our documents. We go there. In going up, Ms. Jenkins and I had agreed we would just listen. This was a meeting to listen, to see what Ms. Kulendran had to say, and then neither I nor Ms. Jenkins had any authority to agree or disagree to anything at that meeting. We were to come back to brief our CEO, Mr. Andersen, and Mr. Lyle, our general counsel. In that sense, we came back—we ultimately came back to brief them, and that was what our role was at the meeting: Hear what she had to say, walk through the documents to be clear as to what their requirements were, and then we went back.

Ms. Kulendran indicated that a new set of documents based on this process needed to be generated by—she said end of day. At that point, this document thing was taking up a lot of resources at the OPA, as you can imagine, and, I'm sure, at the ministry; but at the OPA, it was consuming a lot of human resources. A lot of us were working very late. So I sort of sarcastically said, "What does 'end of day' mean to you? To me, it kind of means midnight around these days." And she said 5 o'clock; it needs to be back at 5 o'clock the same day.

Mr. Victor Fedeli: So she asked for a new set of docs to be generated. Is that what you said?

Mr. Ziyaad Mia: Based on what we had done, a new set of non-privileged Oakville documents needed to be returned to them by 5 o'clock that day. That's end of day, essentially.

Mr. Victor Fedeli: Not Mississauga; this is Oakville.

Mr. Ziyaad Mia: This is the pile we were working on.

Mr. Victor Fedeli: Okay. It's always Oakville. Carry on, then, please.

Mr. Ziyaad Mia: At that point, we gather up the documents, go back to the OPA. I believe Ms. Jenkins had sent an email asking for an urgent meeting with Mr. Andersen and Mr. Lyle. That was essentially set up. She also had just talked to her assistant, I think, just to get the ball rolling in case we were going to proceed.

Mr. Victor Fedeli: This is Jenkins's assistant? Or Kulendran's assistant?

Mr. Ziyaad Mia: No, at the OPA.

We come back—I don't know the exact time; I believe Ms. Jenkins has provided her calendar to you—and around 3 o'clock we have a meeting with Mr. Andersen and Mr. Lyle, where we discuss that meeting, what happened, what the request is, and there's some discussion—I don't have a note of that meeting, so my recollection is, we discussed what happened in the meeting. Then Mr. Andersen—he made his decision, I guess, based on that meeting and other things he may have done for his due diligence. He then decided to proceed to follow that screen.

Mr. Victor Fedeli: Okay, I want to stop here, just for one second. So you're saying that you and Ms. Jenkins got back to the OPA and you did indeed meet with Mr. Andersen and Mr. Lyle—the four of you, or were there others in the room?

Mr. Ziyaad Mia: To my best recollection, the four of us.

Mr. Victor Fedeli: And you and Ms. Jenkins told Mr. Andersen and Mr. Lyle, "Here's what happened." You repeated, basically, what you said there.

Mr. Ziyaad Mia: Essentially, yes.

Mr. Victor Fedeli: Mr. Andersen agreed, or decided to go ahead and make the changes to the documents.

Mr. Ziyaad Mia: He ultimately made that decision. He did not make that decision in the meeting or at the end of that meeting.

Mr. Victor Fedeli: What were his comments in the meeting? "I'll get back to you"?

Mr. Ziyaad Mia: I don't recall his exact comments. My memory of some of what he said, probably refreshed by reading his testimony, is that we had some back-and-forth about, "What is this approach? How is it working?" He may have asked some questions; we answered them. I don't know what other factors he took into account, but ultimately, as you know, he decided to follow that approach.

Then at some point—now, if you look at the time span of that day, we're looking at somewhere around 3 or 3:30. These documents need to be turned and returned at 5 p.m. So at some point after that meeting, he has made that decision. He didn't relay it back to me, so he must have relayed it, I'm assuming, to Ms. Jenkins, obviously, that we were proceeding. Then those documents were reproduced, reflecting that approach, and then delivered at 5 p.m.

Mr. Victor Fedeli: Okay. What happened after Colin Andersen ultimately made the decision to remove the documents that were suggested by Jesse Kulendran? I don't want to put words in your mouth. Is that what happened?

Mr. Ziyaad Mia: Essentially, once he decided that it was appropriate to follow that approach—

Mr. Victor Fedeli: Is that the nice way of saying he decided to remove the documents?

Mr. Ziyaad Mia: The way—I mean, there's—

Mr. Victor Fedeli: You can tell us.

Mr. Ziyaad Mia: We're trying, at stages, to be consistent. As you've heard, the OPA—I mean, we carry out the energy policy of the government of the day, and it's important to be consistent. In the sense that we're responding to a committee motion, we want some consistency. I believe you've heard it before. We want to apply a consistent approach: first, that there's some rationality in that approach, and second, there are also concerns in the sense that OPA represents Ontario's interests for ratepayers. We don't want to expose ourselves because, as you know, we're in negotiations on the file.

Mr. Victor Fedeli: Mr. Mia, because I've got seven minutes left with you, I want to jump to the crux here.

Colin Andersen, based on what you told him, decided to—and correct me if I'm wrong. Just interrupt or just cut in. Colin Andersen decided to remove documents from the original pile of OPA documents so that it would be consistent with the documents that the Ministry of Energy originally said they would be putting in, and as I understand it, it turns out that they didn't remove their documents. They left you to remove yours alone. Am I correct in that?

Mr. Ziyaad Mia: Essentially, Mr. Andersen heard what we had to say. We were under the impression that this was the ministry's approach to responding to the committee request and that's the approach they were taking.

Mr. Andersen decided that we would be consistent and have the same approach, so those documents were re-vetted to apply that approach—

Mr. Victor Fedeli: Can you just say “removed”? Re-vetted, approach—did they remove the documents?

Mr. Ziyaad Mia: Essentially, this approach was applied and a new set, what we believed to be responsive to that approach, was produced.

Mr. Victor Fedeli: Okay, let me ask in another way: When you say, “This approach was applied,” does that mean removing certain documents?

Mr. Ziyaad Mia: Some documents, the documents that are marked as “No reference to Oakville,” were not then sent back to the minister.

Mr. Victor Fedeli: Were they removed from your original pile?

Mr. Ziyaad Mia: They were removed from that pile.

Mr. Victor Fedeli: Thank you very much. But it turns out that the ministry didn't apply their same method, did they?

Mr. Ziyaad Mia: No. In hindsight, 20:20, we understand that to be the case. We did not know that at that time, and we did not know that for several—

Mr. Victor Fedeli: So they hung you out to dry, by the way. I mean, that's apparent today. I don't mean to be rude, and that's not the intent of this discussion. We're trying to find out—

Mr. Ziyaad Mia: I can't speak to anyone's intent, so I can't agree with that comment.

Mr. Victor Fedeli: That's fair. So they told you, “Look, we're going to remove documents that aren't cor-

respondence, that are attachments, that don't necessarily say either specifically the words ‘Oakville’ or ‘Mississauga.’” They told you they were doing that and asked you to do that as well. Am I correct in that assumption?

Mr. Ziyaad Mia: That was our understanding from Ms. Kulendran, that this was the ministry approach.

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Mr. Victor Fedeli: Okay. Yes, that's fair. So you went ahead, based on what they told you they were going to do, and you removed documents that weren't correspondence, documents that they felt didn't, specifically to the letter of some guidelines, meet that requirement. But they didn't do that; they left everything in theirs. You're the only one who took the documents out—

Mr. Ziyaad Mia: In hindsight, from what I know now, looking back, yes, they did not use that approach because that became apparent—I don't know the exact date, but that became apparent—

Mr. Victor Fedeli: So what made you go back later and actually give us all the documents that you originally pulled out? Was it because you realized the ministry hoodwinked you and they didn't take them out and left you hanging out there, or was there some other reason why you turned over 20,000 more documents later, the ones that actually met the fuller description?

Mr. Ziyaad Mia: Just as a preface, the OPA's intent at all times, through my experience, has been to comply in good faith with the request of the committee. And you've seen that we've produced thousands of pages of documents to you.

Mr. Victor Fedeli: It's the ones you didn't produce that we're more interested in.

Mr. Ziyaad Mia: Yes, and I'm trying to explain how we got there.

Mr. Victor Fedeli: Look, I believe you and I appreciate what you're saying. I believe that meeting took place; I believe you when you say you were instructed to remove documents that were not correspondence that didn't say “Oakville,” anything that said “SWGTA,” which is southwest GTA. You were instructed to take those documents out because they were “non-responsive.” Am I correct in that?

Mr. Ziyaad Mia: That's the essential effect of the approach. When you look at the documents—

Mr. Victor Fedeli: Even though those documents did have to do with the cancellation of the gas plant in Oakville, you were instructed to take that out because it didn't have the word “Oakville” in it. Am I correct in that?

Mr. Ziyaad Mia: Now, I can't speak to every particular document because there are various pages of documents in there, so I can't speak to each document.

Mr. Victor Fedeli: But you did go through each document?

Mr. Ziyaad Mia: We did go through it, but not to read the content of every word in the documents.

Mr. Victor Fedeli: I understand. Do you think the SWGTA documents that you removed did have to do

with the Oakville gas plant and that's why you did bring them back a couple of weeks later?

Mr. Ziyaad Mia: Certainly. Some of those SWGTA documents would have dealt with the topic of the Oakville gas plant and ancillary issues as well. It's not a cut-and-dried in that sense. If you look at some of those documents, there are specific things relating to the Oakville facility, but then, there are ancillary issues because we do power system planning. So there would be issues that are kind of related to the impact of cancellation or transmission options—so it may be embedded in—

Mr. Victor Fedeli: Yes. Mr. Mia, I want you to know I believe you. I believe every word you've said here.

Mr. Ziyaad Mia: I appreciate that.

Mr. Victor Fedeli: I believe Kristin Jenkins. I do not believe Jesse Kulendran. When she sat in that same chair as you did, she put her hand on the Bible and took an oath and then she proceeded to tell us something that never did happen. She made up a completely different version than both you and Kristin Jenkins have said to us. I don't believe that meeting took place for any other reason than you to be instructed to remove documents; I believe that.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: Thank you, Chair. I appreciate that.

I believe, when you say that you were instructed to remove documents that were non-correspondence, they were skirting the issue. But I also believe they left you out there, whether it was done by design or not. You went ahead and took the documents out and gave us a short version; they gave us the full pack—well, allegedly full pack. It turns out from the privacy commissioner there's lots of things that were deleted and destroyed. I don't believe you deleted or destroyed anything.

I will ask you now, only because the privacy commissioner was here yesterday: Did you delete any emails, Mr. Mia?

Mr. Ziyaad Mia: Personally?

Mr. Victor Fedeli: Personally.

Mr. Ziyaad Mia: I wasn't involved in the procurement, cancellation or running of the facilities or the arbitration, so I didn't have any relevant documents to begin with on those matters. And if I did, I wouldn't have deleted them. My normal practice is to keep records, because I need to do my business.

Mr. Victor Fedeli: Should that be the normal practice of all government employees and agency employees?

Mr. Ziyaad Mia: I don't think I'm in a—as I said, my—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Mia, thank you for being here this morning. I know I will be covering some of the ground my colleague has touched on, but I just want to go through this in a consistent way.

Jesse Kulendran came before us and said, "I did not direct them to remove any documents." By "them," I

gather she's referring to you and Kristin Jenkins. Is that true?

Mr. Ziyaad Mia: I'm assuming she's referring to us, and the OPA generally, I would assume.

Mr. Peter Tabuns: And just again, the documents she asked you to remove, identified as ones that shouldn't be coming forward—was there any consistency in the pattern that you saw?

Mr. Ziyaad Mia: Now, Mr. Tabuns, I haven't undertaken—I don't know if you have to go vote?

Mr. Peter Tabuns: Hopefully not.

Mr. Ziyaad Mia: Or is that the fire alarm?

I haven't undertaken any comprehensive review of those documents since that day. I haven't gone through to see if there is any pattern. To me, it was a narrow reading of the motion that was applied. There was no hunt for a particular document or anything in that sense. It was just, "Here's a reading of the motion; it's on the narrower side; apply that approach."

Again, this is my approach to it. If you apply that approach, you might get various things taken out. It wouldn't be the approach I would use if I was looking for some particular document.

Mr. Peter Tabuns: As a lawyer, were you skeptical of the directions she was giving you?

Mr. Ziyaad Mia: My role there was to hear what they had to say and go back and brief my boss and the CEO. That's exactly what Ms. Jenkins and I discussed going up to the meeting: that we didn't have the authority; we didn't fully understand, going there, what the meeting was about; and we didn't have the authority to make any decisions. So at that stage, we listened. I took my notes. We marked the documents so that we would have a record of what needs to be done if we do proceed. And then we went back, discussed with our CEO what transpired, and then he ultimately made the decision to proceed.

Mr. Peter Tabuns: Did you raise any questions with Jesse Kulendran about her interpretation of what documents were relevant and which weren't?

Mr. Ziyaad Mia: I did not because I didn't believe that it was my role at that meeting. It was to hear what they had to say and come back and report. I wasn't there in a role to either advise her or challenge her.

Mr. Peter Tabuns: The government was indicating, in this period, really extreme reticence to release documents. In fact, we were having quite a time in this committee trying to get at documentation. Whose goals do you think were being achieved by the interpretation that was being placed on which documents were relevant by Ms. Kulendran?

Mr. Ziyaad Mia: Mr. Tabuns, I'd love to help you. I have no—really, way beyond the scope of my capacity or knowledge because I wouldn't know why that approach was used. I didn't ask why that approach was used. Again, I don't know if it would have even been appropriate for me to have that discussion with her, but again, given the timeline of that day—we're looking at between 10 a.m. and 5 p.m. that all of this transpired. So

we went to the meeting. It was a very busy meeting; we had that meeting with her for a couple of hours. We went back; we had a little huddle about staff, just, if we were proceeding, how to marshal resources to get it done; and then briefed our CEO and then he made a decision and we moved on.

Mr. Peter Tabuns: Okay. Because when we look at it, what Jesse Kulendran was giving you seemed to have been a very different interpretation of the motion that came out of this committee, very different from what the Ministry of Energy was applying. What she was giving you was something that was much closer to the position that the Liberal politicians were adopting—a very, very narrow assessment. Would you agree that Ms. Kulendran's goals were much closer to those of the Liberal political staff and politicians than of the civil service?

Mr. Ziyaad Mia: I really can't speak to what Ms. Kulendran's intent or goals were at that meeting or the outcome or what she intended to happen. It would be pure speculation, so I don't know.

Mr. Peter Tabuns: Okay. Did Jesse ever indicate she was working on behalf of political staff rather than in her capacity as a civil servant?

Mr. Ziyaad Mia: My best recollection is, I did not hear that from her. Our understanding was that she was representing the ministry there. The meeting was called by Ms. Perun, who's a civil servant, the director of legal affairs. It was held in the deputy's boardroom, not in the minister's office. Ms. Kulendran, I know in hindsight now—and Ms. Jenkins—I knew who she was—was involved in estimates committee prep for documents and whatnot. So in my mind, she was representing the ministry, clothed in authority to have this meeting. I had no reason to believe otherwise than that.

Mr. Peter Tabuns: So she didn't give the impression she was working as a political staffer?

Mr. Ziyaad Mia: I didn't get that impression.

Mr. Peter Tabuns: Okay. On October 3, 2012, Kristin Jenkins sent an email to Colin Andersen, copying you and Mike Lyle: "August 22 meeting with Jesse Kulendran on OPA's Mississauga and Oakville power plant documents." It's PC document 1. Did you consult with Kristin Jenkins before she wrote her memo to Colin Andersen?

0900

Mr. Ziyaad Mia: I don't recall if we consulted. I agree with the contents of this memo, and the second paragraph indicates that we had had a discussion about how that meeting went, because at this point it was more than a month prior to the date of this memo. So, at some point I'm sure we had a discussion about that meeting.

It's helpful to have context here. The week of September 24 I was on vacation, as I kind of was having document withdrawal, and went out of the city to get a bit of fresh air, so I was not in the office. If there were things happening on the documents, I wasn't there. At this point she probably would have spoken to me. I believe her testimony is—and I'll rely on that—that on October 2, she had a discussion with Colin Andersen and

we realized that the ministry was taking a different approach. She then had followed up with me about, "Hey, what happened at that meeting?" I remember we went through a page-by-page walk-through, which is then helpful, and at some point we find those documents in all our documents.

So, I can't recall if she consulted me on this, but I do agree with the contents of this memo.

Mr. Peter Tabuns: You do agree with the contents? Her language is somewhat stronger than you have used this morning. She notes that Jesse directed the OPA to exclude attachments—"Jesse directed us to exclude SWGTA." Is this a more accurate record of what happened? It wasn't just a friendly matchup of documents; you were being told, "Don't bring this document forward"?

Mr. Ziyaad Mia: If I can be clear, just to correct the impression, if I've left the wrong impression—she has used the word "directed"—

Mr. Peter Tabuns: Twice.

Mr. Ziyaad Mia: These were instructions from Ms. Kulendran to us. We didn't talk about ministry documents. We were there to talk about the OPA's Oakville non-privileged documents, and we walked through those documents. Ms. Kulendran had indicated to us that this is the approach the ministry is using, and the effect—my best recollection is, I don't know if she said that SWGTA is not out. But if you look at the documents and what's out, that is effectively what happens. So, where there's a reference to SWGTA and no Oakville reference, essentially, that falls within the narrow interpretation. You would then have the effect of the SWGTA in the correspondence then being pulled out. So the outcome is such that SWGTA is left out by that approach.

Mr. Peter Tabuns: So did Colin Andersen take it that these were directions from the government when you went back and briefed him in the afternoon?

Mr. Ziyaad Mia: Ms. Jenkins and I would have indicated to him that this is an expectation that the ministry would like to see applied to these documents, and that that's the approach they're using.

Mr. Peter Tabuns: Okay. Had you interacted with Jesse Kulendran before?

Mr. Ziyaad Mia: My only interaction with Jesse Kulendran was from 10 a.m. until noon on August 22, 2013.

Mr. Peter Tabuns: In total?

Mr. Ziyaad Mia: In total. I've probably spent more time thinking about it than the two hours themselves.

Mr. Peter Tabuns: The OPA got quite a lot of public criticism for what Jesse told you to do. Was there ever a desire to explain this on the part of the OPA, to say, "Hey, we were making best efforts and this person from the Ministry of Energy came in and clipped our wings and told us to pull back a whole bunch of documents"?

Mr. Ziyaad Mia: Well, if you can clarify—we've always tried to be straightforward and comply in good faith, from my experience at the OPA. When it became clear to us that there was an inconsistent approach used, I

believe you've seen we've moved quickly to disclose those documents that were not disclosed as a result of that approach. So, 6,400, approximately, additional pages were released. We've responded in that sense. We've tried to articulate that we've acted in good faith.

Mr. Peter Tabuns: I think I was unclear in my question, because I wasn't pointing out a shortcoming on the part of the OPA. You effectively were given instructions that put you in a very difficult position and caused public embarrassment and criticism. You have an explanation, in part, that you were told by the Ministry of Energy, "Hey, you're being far too open here. You need to cut back on what you're making public." Did the Ontario Power Authority ever think to say, "In fact, we were going to be far more open, but the Ministry of Energy said, 'Let's get rid of these documents. Let's set these aside'?"

Mr. Ziyaad Mia: I appreciate the question. It wouldn't be my role to have made those decisions or those responses. That would be outside the scope of my duties, so I don't know how the responses to particular issues were dealt with. It is not within the scope of my duties.

Mr. Peter Tabuns: Okay. You're aware that the Ontario public service investigated Jesse's interference. Did they speak with you?

Mr. Ziyaad Mia: They did not speak with me.

Mr. Peter Tabuns: In the end, did you feel that Jesse Kulendran gave the OPA inappropriate direction?

Mr. Ziyaad Mia: I don't know if it's really for me to say it was inappropriate. On the scope of reading the motion, it's on the narrower side. In hindsight, obviously, now that I realize there was an inconsistent approach, certainly if that had come to our attention earlier, we would have resolved it earlier and avoided some grief. But I don't know if it was inappropriate.

Again, if our appreciation of it was that, "This is the ministry approach," and Ms. Jenkins and I were walked through that approach. We came back and briefed our CEO—as I've said, OPA's intent is to try to implement government policy as best we can, and we try to have a consistent approach. In that sense—

Mr. Peter Tabuns: I don't have an argument with that.

Mr. Ziyaad Mia: Yes. In that sense, given what I knew then, it was not inappropriate that we would try to do that and work with them. Hindsight is always 20:20. Yes, now we see that it's inconsistent, and I don't know any of the ministry's side of why there is an inconsistency or why Ms. Kulendran indicated those things to us. I can't speak to that, but certainly now that I look at it in hindsight, I wish there were more clarity.

Mr. Peter Tabuns: Okay. I'm going to go in a different direction here. You're currently involved in the FOI process for the OPA?

Mr. Ziyaad Mia: I have been involved from—because our FOI coordinator was on medical leave, and all hands on deck, so I was involved at some point last year.

Mr. Peter Tabuns: How long have you been involved with the FOI process for the OPA?

Mr. Ziyaad Mia: Last year, I was involved for several months—maybe five months, six months. I've been working on it a little bit now just because we're short on some staff.

Mr. Peter Tabuns: And were you involved in 2010 or 2011?

Mr. Ziyaad Mia: I was not.

Mr. Peter Tabuns: Okay. Were you involved in any requests for information about either the Mississauga or Oakville contracts?

Mr. Ziyaad Mia: In an FOI—

Mr. Peter Tabuns: Yes.

Mr. Ziyaad Mia: Not to my knowledge. We used our original search of the documents, as you know; we leveraged some materials that were gathered in an FOI request. I wasn't involved in that FOI request per se. I was involved on May 28 or thereabouts, when Mr. Lyle asked a number of his staff to assist in responding to the committee's request.

Mr. Peter Tabuns: In your experience, was there ever any internal pressure to limit document disclosure?

Mr. Ziyaad Mia: In my experience with the OPA? I can't say there has been.

Mr. Peter Tabuns: Do Ontarians have the right to access information from the OPA?

Mr. Ziyaad Mia: I believe in open access, personally. Again, my experience is that the OPA wants to act in good faith and in compliance with the law. It respects freedom of information. We certainly have staff in the process that we try to respond to FOIs—

Mr. Peter Tabuns: Do you believe it's properly carried through by that Ontario Power Authority?

Mr. Ziyaad Mia: In my experience, yes. It's a learning process, because this document disclosure process has certainly taught us a few lessons on large document discovery and disclosure, so yes.

Mr. Peter Tabuns: Did Ben Chin ever comment on the FOI process or request denials?

Mr. Ziyaad Mia: I had limited contact with Ben Chin other than casual contacts as a fellow employee in the OPA, so I can't say. I had no discussions with him about that.

Mr. Peter Tabuns: Mr. Chair, how much time do I have?

The Chair (Mr. Shafiq Qaadri): Five minutes, Mr. Tabuns.

Mr. Peter Tabuns: Five minutes; okay.

Are you familiar with the Oakville and Mississauga gas plant contracts?

Mr. Ziyaad Mia: Not in any way other than very generally from what I know publicly and just having been in the OPA. I don't know any details about particular facilities.

0910

Mr. Peter Tabuns: Are you familiar with the risks of going into arbitration?

Mr. Ziyaad Mia: Generally? Again, I work in aboriginal and regulatory affairs; so I'm not a corporate lawyer, but generally I would understand the risks of being in an arbitration or in a litigation situation.

Mr. Peter Tabuns: Were you involved in any way in the renegotiation of the Greenfield contract?

Mr. Ziyaad Mia: I was not.

Mr. Peter Tabuns: Were you and the OPA aware of the community opposition to the Mississauga gas plant?

Mr. Ziyaad Mia: I was aware of it in the sense that it was publicly known.

Mr. Peter Tabuns: And the Oakville gas plant?

Mr. Ziyaad Mia: Yes, I was aware of that.

Mr. Peter Tabuns: What was the response within the OPA? What was your understanding of this rejection or resistance to these plants?

Mr. Ziyaad Mia: Again, if you could clarify your question. I wasn't involved in any of those projects, so other than what we see in our news clippings, that there are issues, opposition to the facilities—and then ultimately the facilities were cancelled. Obviously, I was aware of that in that it involves our agency.

Yes, we've signed contracts to build facilities. You're turning a ship; you're making some decisions. They are obviously large contracts, and they will then need to be changed or cancelled. Whatever the outcome would be would be taxing, but I wasn't directly involved in the procurement-relocation-cancellation issues, so I can't speak directly to that.

Mr. Peter Tabuns: Okay. Thank you, Mr. Mia.

Mr. Ziyaad Mia: Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns. To the government side: Signor Del Duca.

Mr. Steven Del Duca: Thank you, Mr. Mia, for being here with us this morning and for answering our questions.

I know that a lot of territory has been covered by the members opposite regarding the meeting on August 22, but I want some additional clarity—I hope you don't mind—around some of the stuff.

I know it was discussed previously in response to some of the other questions. Obviously, the Ministry of Energy was conducting their own concurrent search alongside the OPA. Just to be clear, did it seem logical to you that the OPA and the ministry would touch base in terms of the search process in order to compare notes and ensure that the request of the committee was being met? Would that seem like a logical step to you?

Mr. Ziyaad Mia: As I've said in response to some of the other questions—and you've heard testimony from some of our staff—given our role in implementing policy, it's helpful to have a consistent approach in things, to be smooth in carrying out policy. And in this particular case, in responding to the motion, it was important to have a consistent approach.

The parallel issue was that there were negotiations ongoing with the counterparties to these contracts. Ontario and the OPA would potentially have a common

interest as well in protecting the broader Ontario interest with respect to those counterparties.

So yes, a consistent approach is generally important.

Mr. Steven Del Duca: Which would be consistent with what your CEO, Colin Andersen, did say in a press conference here at Queen's Park when he was discussing this particular topic. He said that "it's natural that we compare notes on what we are doing."

So you would agree again that Mr. Andersen was making an appropriate statement when he said it was important to compare notes and make sure that both the ministry and the OPA were following a similar approach with respect to the request. You would agree that, again, that makes sense.

Mr. Ziyaad Mia: In general, yes.

Mr. Steven Del Duca: Yes, logical sense. Okay.

I know there was some discussion regarding the issue of documents arising from that August 22 meeting that weren't disclosed at that particular point in time, but just so we have some clarity around that, the 700 or so documents that weren't disclosed post-August 22 were ultimately disclosed on October 12. In fact, in addition to the 700 documents that weren't initially disclosed, there were somewhere in the neighbourhood of 14,000 documents that flowed around October 12. Is that correct?

Mr. Ziyaad Mia: My best recollection—and a lawyer's not good with numbers, but I'll give it a shot—I believe on October 12, roughly just under 14,000 pages were disclosed. Roughly 6,400 of those pages were related to the outcome of the meeting of August 22. So ultimately, yes all those documents were released.

Mr. Steven Del Duca: Thank you for helping to clarify that.

Earlier, you talked to us a little bit about your role at the OPA and your reporting relationship. When Ms. Jenkins was here, she was asked if she reported directly to Ms. Kulendran and she said no. I just want to be clear on this: The same could be said for you. You don't report to Ms. Kulendran.

Mr. Ziyaad Mia: I report to Michael Lyle at the OPA.

Mr. Steven Del Duca: Thank you. Okay, fantastic.

When he testified here before this committee, Deputy Minister Imbrogno did state that Ms. Kulendran—and I'm quoting here—"was in a capacity of coordinating. She wasn't in the capacity of providing direction."

Ms. Kulendran herself told our committee, "I did not have the authority to direct the OPA."

Based on what you've told us so far and what we've heard previously, that would seem accurate: Ms. Kulendran did not have the authority to direct the OPA. Is that correct?

Mr. Ziyaad Mia: I believe you may have covered this ground in previous testimony. In the sense of under the law, under the Electricity Act—the formal authority to direct, because the OPA follows direction from the Minister of Energy—in that sense, as I believe Ms. Jenkins said—capital-D direction under the act—yes, Ms. Kulendran does not have the authority to direct the OPA. Only the Minister of Energy can direct the OPA.

Mr. Steven Del Duca: Okay. Not to belabour this point, but I do think it's important, given some of the suggestions that have been made by members on the other side: When Ms. Kulendran testified here before this committee, she did say to us, and I'm going to quote her again: "I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents."

"The conversation of August 22 was about sharing observations that had been made to us through the ... review of the documents, but it was not to provide direction."

Then we had the deputy minister here, Mr. Imbrogno, about the allegations that had been put out by some of the members opposite. I quote him as well: "I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude documents. When I talked to Jesse about the allegation, she told me ... that she did not direct the OPA. I have no reason to not believe what Jesse" has said.

So that's Jesse; that's the deputy minister. Then, of course, Secretary Peter Wallace launched an investigation into the allegations and found no evidence of wrongdoing. Ms. Perun told us, "I believe her."

In terms of making sure that—and I know this sounds like we're going over the same points over and over again, but I think it's really important, because there is certainly a lot of stuff that's being suggested by members opposite that strikes a bit of a different tone from the quotes that I've just provided to you.

I think there is one thing that we can agree on: that there was—let's call it a miscommunication. But all documents have now been disclosed, and Ms. Kulendran was not in a position to direct the Ontario Power Authority. Is that correct?

Mr. Ziyaad Mia: As I've said, she doesn't have the legal authority under the act to capital-D direct the authority.

But I want to be clear that at the meeting of August 22, Ms. Kulendran provided us with instructions and an expectation that the narrow reading of that motion, that approach, was the ministry approach to the documents, and that approach was expected to be followed by the OPA.

Now, as I have testified just earlier this morning, neither Ms. Jenkins nor I were in a position to agree or disagree with that, because we didn't have the authority to do that. We took that information back to our CEO. We discussed it with him; we explained to him what was required. He then took that information and then did his own due diligence and made a decision to then follow that approach.

So I'd have to disagree with Ms. Kulendran: That meeting was not about comparing notes. We did not look at ministry documents. We weren't asked for our opinions about ministry documents. We were looking at OPA's Oakville non-privileged documents, and Ms. Kulendran was giving us instructions as to how to apply those. Ms. Jenkins, in particular, was writing notes on them, based on that discussion.

Mr. Steven Del Duca: Great. Thank you, Mr. Chair. I think we're done with our round.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. To the PC side: Mr. Michael Harris.

Mr. Michael Harris: All right. Good morning.

Mr. Ziyaad Mia: Good morning.

Mr. Michael Harris: Were you uncomfortable about or did you have any misgivings as to what Ms. Kulendran was directing you to do?

0920

Mr. Ziyaad Mia: My best recollection is, I don't think I had any discomfort or misgiving at that meeting. We were there to listen to what she had to say and come back and report back to our CEO, which we did. As I've said, on the scope of reading that motion, it's on the narrower end. We probably would have explained that to our CEO, and then he ultimately would have made that decision.

Mr. Michael Harris: So at no time during that briefing were there any questions that you felt you needed to raise?

Mr. Ziyaad Mia: Again, our role in that meeting was to go there. We were asked to go. We agreed to just listen to see what was going to be said because, going up there, we didn't understand the full substance of that meeting. Because we weren't making a decision, it wasn't our role to have a discussion about it or challenge Ms. Kulendran. We recorded as best we could what she was asking us to do in terms of the OPA, and we took that back to our ultimate boss.

Mr. Michael Harris: Did you feel there was clarity after that meeting was—

Mr. Ziyaad Mia: What was required?

Mr. Michael Harris: Yes.

Mr. Ziyaad Mia: I felt there was clarity of what Ms. Kulendran was indicating to us was required from the ministry, yes.

Mr. Michael Harris: Whose version of events is more credible, in your opinion? Do you believe Kristin Jenkins or Jesse Kulendran?

Mr. Ziyaad Mia: With respect, I was the third person there, so I don't know it's for me to decide who's—I was in the room and I have my recollection, and my notes of that meeting as well, which I believe you have. My recollection is consistent with Ms. Jenkins'. So it's not that I agree with Ms. Jenkins. To my recollection, that is what transpired at that meeting.

Mr. Michael Harris: After that meeting, what further interactions did you have with regard to document production?

Mr. Ziyaad Mia: Again, given the volume of documents and the task at hand, there were a lot of people marshalled from different departments of the OPA to actually just apply human resources to get documents produced. So I was involved in working with those people to produce documents. Just getting them ready and produced was a task, so I was involved in that process. So, essentially, yes, just assisting in the document disclosure process.

Mr. Michael Harris: After the meeting, when was your next contact with Halyna Perun?

Mr. Ziyaad Mia: My next contact with Halyna Perun? I believe I sent—and this is just my best recollection. I believe I sent Ms. Perun an email on the afternoon of August 24, just indicating—because at that point we were producing the non-privileged documents for both facilities. This approach was applied to those documents, and they were expected to be then turned back to the ministry at end of day on August 24, which was a Friday.

At some point, we had flagged some issues about—you've heard them before from our previous witnesses—commercial confidentiality, putting counterparties at risk, because there's confidential information in there, commercially sensitive information, putting at risk Ontario's and the OPA's solicitor-client privilege; those sorts of issues. So I had sent an email on behalf of Michael Lyle—he wasn't available—indicating to Ms. Perun that we'd flagged some of these issues, that these sorts of things are in the documents because they're there, and we wanted to bring that to her attention that these are risks.

Mr. Michael Harris: What was her response to that email?

Mr. Ziyaad Mia: If I recall correctly, I believe she responded to me several days later indicating she'd had some discussion with Michael Lyle. Again, it's just my recollection: I think I had a question in there about the role of not this committee but I guess the estimates committee's request in terms of legal privilege and had she thought about that. She said that they're thinking about it, and we should think about it as well, essentially.

Mr. Michael Harris: Did you at all discuss with her the meeting of August 22?

Mr. Ziyaad Mia: Not that day. When it became apparent that there was a variance or discrepancy in the approach to the documents between the ministry and the OPA, I believe I gave her a courtesy call, because Ms. Perun is a government colleague. She's a lawyer. I did not want her thinking that I was casting any aspersions on her, that she'd set up this meeting and now there was some issue about that meeting. So I believe I did call her at some point, but I can't recall the full details of that.

Mr. Michael Harris: And what was her response to you about that—

Mr. Ziyaad Mia: I don't recall. It was colleague-to-colleague, just to say, "Heads up. You know what? I'm not pointing any fingers; I'm not pinning anything on you. It's just that this meeting, obviously, has caused us some grief now because there is a discrepancy in approach." That's essentially what was a courtesy call.

Mr. Michael Harris: Did you have any involvement with the subsequent document dumps?

Mr. Ziyaad Mia: If you can give me some more clarity on what—do you mean additional disclosures?

Mr. Michael Harris: Right.

Mr. Ziyaad Mia: As I said, I was involved—

The Chair (Mr. Shafiq Qadri): We appreciate the elevation of vocabulary.

Mr. Ziyaad Mia: Thank you. I'm a big fan of that.

Essentially, again, there was a lot of paper flying around, so I'm trying to recall. I was involved with many OPA employees in trying to produce documents. What has been called the first disclosure in September—I was involved in that, obviously, getting those documents together, and then there was another disclosure, I believe, in October. I probably would have supported some of that, and then there was a third disclosure. I don't believe I was involved in any way in the third disclosure.

Mr. Michael Harris: What advice did you provide Colin Andersen, Kristin Jenkins or anyone else at the OPA with regard to that?

Mr. Ziyaad Mia: As I've indicated, when we left the meeting with Ms. Kulendran, Ms. Jenkins and I—obviously, seeing the urgency of the matter, she emailed Mr. Andersen's assistant and set up a meeting, so we got a meeting at some point that afternoon. The four of us met—Mr. Andersen, Ms. Jenkins, Mr. Lyle and myself. We discussed the meeting and what transpired. I don't have a full recollection of all the details of that meeting, but I believe that Mr. Andersen has said that we had a discussion about the approach that was being taken by the ministry, as we understood it at that point, whether it was narrow or not, and then he took that information and ultimately made the decision. He did not make the decision there, but we discussed it, I'm sure, and the approach, and then he went and made the decision.

Mr. Michael Harris: And what were Kristin Jenkins's comments at that point?

Mr. Ziyaad Mia: I don't recall the details of that meeting because, again, that day was moving. I didn't take a note in that meeting.

Mr. Michael Harris: Was there anybody else? It was Colin Andersen and Kristin Jenkins. Was there anybody else attending?

Mr. Ziyaad Mia: Mr. Lyle, Michael Lyle. I believe he's testified to the committee previously.

Mr. Michael Harris: Why did the OPA redact documents before turning them over?

Mr. Ziyaad Mia: Again, it's my recollection of what happened, because a lot of things were happening. Some redactions were made for non-responsive—clearly, as all of us know, you'll have a briefing document or some document dealing with a number of projects because you will have status updates or whatnot, so there may be many issues on one document. One piece may be, say, Oakville, and then the rest of it is all sorts of other work we're doing, especially if it's commercially sensitive. As you know, the OPA contracts with a lot of counterparties, a lot of sensitive information, so we wouldn't want other counterparties' information out in the public realm because that would prejudice our commercial interests, so some of that was redacted. I believe there was some issue about banking information being redacted at some point because somebody astute flagged that we were disclosing documents—

The Chair (Mr. Shafiq Qadri): One minute.

Mr. Ziyaad Mia: —that had banking and financial information of counterparties. We didn't want that out in

the public, as you would know, because we're putting someone's bank account at risk and their financial interests.

Mr. Michael Harris: Right. Were those documents turned over to the Clerk first, or to the ministry?

Mr. Ziyaad Mia: I can't speak to the actual transfer of documents; I wasn't involved in that.

Mr. Michael Harris: Did you provide any advice with regard to the document redactions?

Mr. Ziyaad Mia: Again, it was a large group of people because of the tight timelines, so I was probably involved in assisting people to redact and doing some of it myself, because it was all hands on deck. At some point there were various of us involved. Most likely someone would have said, "What do you think about this plant X?" And if I was aware of it, I'd say, "Clearly this is not related to these facilities. That should be redacted."

Mr. Michael Harris: I see. Did Ms. Kulendran indicate who instructed her to have you remove the documents?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Harris. Monsieur Tabuns, je passe la parole à vous.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Mia, thank you for your co-operation and your assistance today. You were very straightforward. We appreciate it.

Chair, I don't have questions. I do have a motion that I would like to have discussed when we end.

0930

The Chair (Mr. Shafiq Qaadri): A motion would be advisable post the testimony.

Mr. Peter Tabuns: Correct. I just wanted to note it so that you didn't accidentally bring your gavel down.

The Chair (Mr. Shafiq Qaadri): No accidents here, Mr. Tabuns. Thank you. To the government side.

Mr. Bob Delaney: Thank you, Chair. Don't worry, Peter; we wouldn't let you escape without your motion.

Okay, Mr. Mia, I think we're pretty close to done. In listening very carefully to the exchange back and forth—I just want to encapsulate it—in the document disclosure process, there were some errors and omissions. People seemed to have various versions about who said what to whom. But the bottom line is, if I understand you correctly, everyone acted in good faith to respond to the committee's request for documents, correct?

Mr. Ziyaad Mia: From my experience at the OPA and speaking for the OPA, because that's all I can really speak for, yes, that is correct. We tried to comply in good faith, and ultimately all the documents were disclosed.

Mr. Bob Delaney: We're speaking now nine months later—or nearly a year later, actually, since the motion from the estimates committee. If we remember the motion from the estimates committee, it asked for correspondence—I guess in legal terms, "correspondence" means something—and it asked for correspondence from the OPA, the Minister of Energy and the Ministry of Energy. If I understood what you were saying in response to the various questions, you were trying to, in your discussions, land on something clear, consistent and

complete on providing correspondence to respond to the motion, correct?

Mr. Ziyaad Mia: Correct. In the plain meaning of the word, "correspondence" would be, in this case, a letter; or in today's world, an email would be considered correspondence. If you read the motion, it's asking for correspondence related to the cancellation of the two facilities and within particular date ranges. I don't know them off-hand, but that was essentially what the motion was asking for.

Mr. Bob Delaney: Okay. With regard to whether documents were withheld because they either did or didn't respond to the motion at the time from the estimates committee last May, your chair, Jim Hinds, said in part, "We messed up some search terms, and we're trying to get them cleaned up, so I'm not sure what this has to do with the government. This is all us."

Mr. Ziyaad Mia: If I recall Mr. Hinds's testimony, he was referring particularly in that answer to the so-called third disclosure earlier this year. So in that sense, yes.

Mr. Bob Delaney: Okay. In his letter to the Clerk on October 12 of last year, 2012, Colin Andersen stated, "It was always our intention to provide all responsive records and to respect the ruling of the Speaker."

Just to conclude one last time, given the sheer volume of the documents requested and the fact that you were doing a lot of this work for the first time—I think one of your people, I can't remember who, said, "We are in the business of producing electricity and not ... documents." The OPA, in your experience, from the work that you saw and what you did, acted in good faith in response to the document production motion, right?

Mr. Ziyaad Mia: Correct. In my experience at the OPA with these matters, we have—as you know, there's a lot of paper involved, especially in today's world with electronic documents. It's not as easy as going to a room and saying, "Give me all of the Oakville documents. Go to this room or this filing cabinet"; there's a hunt for documents because many people are involved. So in that sense, yes, my experience with it—it was a large and complicated process, and we tried in good faith to comply at all times.

Mr. Bob Delaney: Mr. Mia, I think we've said all we need to say. Thank you so much for having come in today. Chair, I think we're done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thank you, Mr. Mia, for your presence. You are officially dismissed.

Mr. Ziyaad Mia: Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, you have the floor for your motion.

Mr. Peter Tabuns: I do, but before we go to my motion, Chris Morley is a witness. What success have we had contacting him to come before our committee?

The Clerk of the Committee (Ms. Tamara Poman-ski): I don't have it on me. I can find out.

Mr. Peter Tabuns: Do you know—

The Clerk of the Committee (Ms. Tamara Poman-ski): I don't have it on me. I can go get it.

Mr. Peter Tabuns: Have there been numerous attempts to get him before us?

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes, there would have been, but I can double-check and get back to you. I don't have—

Mr. Peter Tabuns: When you come back, could you also just fill us in on what it would take to get a Speaker's warrant to have him appear before this committee?

The Clerk of the Committee (Ms. Tamara Poman-ski): Okay. Yes. All right.

Mr. Peter Tabuns: Okay. If you could circulate the motion.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Chair.

I move that when the House rises, the committee continue to meet on Tuesday's from 9 a.m. to noon and 1 p.m. to 2:30 p.m., to allow one witness to testify from each party, until the House returns on September 9, 2013, where the meeting schedule shall revert back to Tuesdays from 8:30 a.m. to 10:15 a.m. and 3 p.m. to 6 p.m. and Thursdays from 8:30 a.m. to 10:15 a.m.

The Chair (Mr. Shafiq Qaadri): Thank you.

Mr. Delaney.

Mr. Bob Delaney: In the vein of a helpful amendment, may I suggest that the apostrophe be removed from "Tuesday's"?

Mr. Peter Tabuns: Sir, I will accept that friendly amendment.

The Chair (Mr. Shafiq Qaadri): We were hoping for more there, Mr. Delaney, but—

Mr. Bob Delaney: We may not be quite done yet, Chair.

The Chair (Mr. Shafiq Qaadri): Fine. Any further discussions before we vote on this motion?

Mr. Peter Tabuns: No. I'd just like a recorded vote on it.

The Chair (Mr. Shafiq Qaadri): A recorded vote.

Mr. Victor Fedeli: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Fedeli.

Mr. Victor Fedeli: I have an amendment that I'd like to move.

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Victor Fedeli: May I read it as it's being handed out?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Victor Fedeli: I move to amend the motion by adding the following after the word "Tuesdays": The addition is "of June and August".

The Chair (Mr. Shafiq Qaadri): Fine. So the intent is, no meetings in July?

Mr. Victor Fedeli: Yes. With the new 40,000 documents that we have, we want to spend considerable time looking through those documents.

With the new documents that we have, the 40,000 documents, as I was saying earlier today with our team, when we eventually got the original 56,000 documents, if we only knew then what we know now, the subtle nuances that were there, such as when former Finance

Minister Duncan was here, Chair, when he was talking about the little nuances that he placed in. We didn't understand why he put so much emphasis on those words. There are now 40,000 more documents to go through. We're going to need some time. Because we now understand what those nuances mean, we're going to have to pick through rather carefully.

The Chair (Mr. Shafiq Qaadri): We certainly support your request to take more time. In fact, we wish you'd take more time.

Mr. Peter Tabuns: Ever helpful, Mr. Chair; ever helpful.

I have to disagree with Mr. Fedeli on this. I think there's every reason for us to continue to meet through the summer. What we've suggested is a reduced schedule: not twice a week; once a week. I think that will leave ample time for people to comb through the documents and bring forward what's necessary.

I understand you'll bring forward the amendment.

The Chair (Mr. Shafiq Qaadri): Fair enough. Are there any further questions before we vote on the amendment to the motion? Seeing none—

Mr. Peter Tabuns: Recorded vote on the amendment.

Ayes

Albanese, Del Duca, Delaney, Fedeli, Leone.

The Chair (Mr. Shafiq Qaadri): Thank you. That amendment carries.

Mr. Peter Tabuns: You may want to ask for the cons, the nays, and have it recorded.

The Chair (Mr. Shafiq Qaadri): Yes, the nays, if any.

Nays

Natyshak, Tabuns.

The Chair (Mr. Shafiq Qaadri): Yes. As stated, the amendment, happily, carries in any case.

Now we'll move to the main motion presented by Mr. Tabuns.

Mr. Peter Tabuns: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Shall the motion, as amended, carry?

Mr. Victor Fedeli: This is which motion?

The Chair (Mr. Shafiq Qaadri): As amended.

The Clerk of the Committee (Ms. Tamara Pomanski): The main motion, as amended, carry.

The Chair (Mr. Shafiq Qaadri): No July.

Interjections.

The Chair (Mr. Shafiq Qaadri): Can we please do this again?

Shall the main motion, as amended, presented by Mr. Tabuns, amended by Mr. Fedeli, carry?

0940

Interjection.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Albanese, Del Duca, Delaney, Fedeli, Leone.

Nays

Natyshak, Tabuns.

The Chair (Mr. Shafiq Qaadri): The motion, as amended, carries. Thank you.

Mr. Victor Fedeli: There's another motion from me, I thought. Do you have that, Clerk?

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes.

Mr. Victor Fedeli: May I read it while it's being handed out? The big long one.

Interjection.

Mr. Victor Fedeli: Hang on a second.

Mr. Peter Tabuns: We need to have it circulated.

Mr. Victor Fedeli: Yes, I'm just trying to figure out which one. I've got two here.

Interjection.

Mr. Victor Fedeli: Both? You've got both? We're going to ask for both eventually—

The Clerk of the Committee (Ms. Tamara Poman-ski): —which one right now?

Mr. Victor Fedeli: Whatever one you like. You tell me which one you're handing out, and I'll read it.

Interjection.

Mr. Victor Fedeli: All right. I move that the Standing Committee on Justice Policy request from the Premier's office and Cabinet Office the production of all electronic devices, including but not limited to compact discs, USB keys and external hard drives containing email correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent or received by the following individuals: Mr. David Livingston, Mr. Craig MacLennan, Mr. Sean Mullin, Mr. Jamison Steeve, Mr. Chris Morley, Mr. John O'Leary, Ms. Rebecca MacKenzie, Ms. Lauren Ramey, Ms. Laura Miller, Ms. Wendy McCann, Mr. David Phillips, Mr. David Gene, Mr. John Brodhead, Mr. Christopher Bentley, Minister Brad Duguid and Mr. Dalton McGuinty; and that the devices be provided to the committee within one calendar week of the date of the motion passing.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. I'm sure you appreciate the extremity of this. In any case, any further comments?

Mr. Bob Delaney: Chair, I think we are going to need a recess to discuss this. I'm not sure that this motion is within the committee's scope, so we would—

Interjection.

The Chair (Mr. Shafiq Qaadri): The motion, technically, is in order. But I—

Mr. Peter Sibenik: If I can just speak to it first, Mr. Chair. Standing order 110(b) says, "Except when the House otherwise orders, each committee shall have power to send for persons, papers and things." I would think that an electronic device is a thing. The standing

order is fairly broadly worded so that the committee has very wide latitude to institute an inquiry.

The concern that I do have with this particular motion, and I've just seen this myself, is that it addresses sitting members, in particular Mr. Duguid and Mr. McGuinty. I have a little difficulty wrapping my head around that. I'd almost want to think a little bit about that, perhaps over a recess. I'm not sure, but it's an issue that I do bring to the committee's attention. These are devices belonging to sitting members that the motion would request.

The Chair (Mr. Shafiq Qaadri): I would also just add a couple of issues. One, sitting MPPs, unless we, for example, get things like Speaker's warrants, I understand it are able to refuse attendance if they wish. I presume, naturally, that extends to their things—

Mr. Victor Fedeli: I would think that would be up to them—

The Chair (Mr. Shafiq Qaadri): Secondly, the mandate of the committee is specific with reference to energy infrastructure, gas plants, Mississauga, Oakville. General hard drives, general USBs etc. are likely going to encompass much, much more than that, and that really—

Mr. Victor Fedeli: But we're asking here "related to the cancellation and relocation" of Oakville and Mississauga.

The Chair (Mr. Shafiq Qaadri): Yes, but as you can appreciate, no one has an energy infrastructure hard drive alone. Understood?

Mr. Victor Fedeli: Well, we think there are energy hard drives alone. According to the privacy commissioner, they were put on USB sticks and were moved from the government—

The Chair (Mr. Shafiq Qaadri): All right. Fair enough. With all due respect, Mr. Fedeli, we are meeting, as you know, Tuesday. I think, because of the complexity of this, if you wouldn't mind—just stand down this motion until we process it on this side.

Mr. Victor Fedeli: May I speak directly to the—

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Victor Fedeli: Will you use that time between now and Tuesday, then, instead of the 20-minute recess now? Will you use that time to make your analysis of this?

Mr. Bob Delaney: We would very much like to—we would very much agree with the Chair. There are some very complex issues raised, not the least of which is identifying a device. Does that mean, for example, that any device ever touched by any of these people is within the committee's reach? How does one determine that? There are some—

The Chair (Mr. Shafiq Qaadri): Let me just mention: There's a little bit of discussion whether the motion is actually in order or not.

Mr. Bob Delaney: So I think we do need some time to think about this one, Chair.

Mr. Victor Fedeli: So, Chair, we are—

The Chair (Mr. Shafiq Qaadri): So we'll stand this one down with your—

Mr. Victor Fedeli: No, not necessarily, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: One of the concerns we have is that we don't want to see any further destruction of documents, and so the concern about a delay in this motion is that it gives opportunity to people to clean drives, clean hard drives etc.

The Chair (Mr. Shafiq Qaadri): Be that as it may, I need to also just apprise you of my role as Chair. If I allow this motion to carry without proper deliberation on behalf of the Clerk and the Parliament here, this then will set the precedent that any device touched, electronic or otherwise, is then callable by the committee. I don't think that that's either the desire or, by the way, the right of the committee.

As I say, as Chair, I'm going to reserve ruling on this.

Mr. Peter Tabuns: And I understand that you want to be very clear in your mind before you make a decision on that. And if we have a 20-minute recess for you to think about that?

The Chair (Mr. Shafiq Qaadri): I think it's going to take longer than 20 minutes, Mr. Tabuns. We're meeting again on Tuesday.

Yes?

Mr. Peter Tabuns: Mr. Chair, then there needs to be a very clear order, perhaps a motion, that those in possession of this material that is under consideration are ordered not to delete any files that relate to this matter.

Mr. Victor Fedeli: Chair, may I ask our legal opinion here: Can we resolve this in 20 minutes?

Mr. Peter Sibenik: I think what Mr. Tabuns is asking for is some kind of a preservation order so that—

Mr. Victor Fedeli: But I'm not speaking to that. I'm speaking about the original motion. Can we make an analysis in 20 minutes?

Mr. Peter Sibenik: No.

Mr. Victor Fedeli: Then I'll go back to Mr. Tabuns—
Interjections.

The Chair (Mr. Shafiq Qaadri): Fine. We'll need it in some kind of writing, then, I presume.

This motion is now deferred.

Mr. Victor Fedeli: Until Tuesday?

The Chair (Mr. Shafiq Qaadri): Yes, the ruling, until Tuesday.

The Clerk of the Committee (Ms. Tamara Poman-ski): Until the next meeting day.

The Chair (Mr. Shafiq Qaadri): Which is Tuesday.

Mr. Peter Tabuns: Can we recess for five minutes so that I can draft a preservation notice?

The Chair (Mr. Shafiq Qaadri): Fine. Fair enough—a five-, 10-minute recess.

Mr. Victor Fedeli: I still have another motion. Can we deal with this other motion of mine?

The Chair (Mr. Shafiq Qaadri): Fine. Why don't we do that.

Mr. Victor Fedeli: Would you mind?

Interjection.

Mr. Victor Fedeli: My other motion, which will be handed out now.

I move that the Standing Committee on Justice Policy invite the Information and Privacy Commissioner of Ontario (IPCO) to appear before the committee as a neutral witness to present and discuss her special report entitled *Deleting Accountability: Record Management Practices of Political Staff* on Monday, June 10, 2013, from 8:15 to 10 a.m.; and

That if the IPCO is unable to attend on that day, that the Monday meeting be cancelled and she be invited to the committee on Tuesday June 11, 2013, from 8:15 a.m. until 10 a.m.; and

That the IPCO be permitted to make a 10-minute opening statement, followed by a total of 90 minutes of questioning split between all three parties on a rotational basis.

The Chair (Mr. Shafiq Qaadri): All right. So I'll allow the Clerk to make her comment.

The Clerk of the Committee (Ms. Tamara Poman-ski): With respect to this motion, just to let you know, because of next week, for meeting rooms, finance was probably going to sit next week, along with estimates, and they require this room. So we'll probably end up in another room, and we'll make adjustments accordingly, but live streaming may not be—it will be from a static camera etc. It's not as technologically advanced.

The Chair (Mr. Shafiq Qaadri): That's fine. There will be some people disappointed, no doubt, in any case.

Mr. Victor Fedeli: I'm fine with that. We understand and expect that.

The Chair (Mr. Shafiq Qaadri): Any comments before we entertain this motion? Fine.

Those in favour of this privacy commissioner motion? All in favour? All opposed? The motion carries.

The instructions and invitations, we should send immediately.

We are now recessed for five to 10 minutes.

The committee recessed from 0949 to 1015.

The Chair (Mr. Shafiq Qaadri): The meeting is in session. Mr. Tabuns, you have the floor for a motion.

Mr. Peter Tabuns: Thank you, Chair. I move that the Premier's office, the Cabinet Office, and all the individuals identified in Mr. Fedeli's motion dealing with electronic devices take all measures to preserve the electronic devices and the information contained in them until such time as Mr. Fedeli's motion is voted upon, and that the Clerk of the Committee so inform the individuals identified in the motion.

Mr. Chair—

The Chair (Mr. Shafiq Qaadri): Just before you continue, Mr. Tabuns, the version we have is different from the version you just read.

Mr. Peter Tabuns: This was the one I was handed by the Clerk.

Mr. Victor Fedeli: Mine is different too.

Interjections.

The Chair (Mr. Shafiq Qaadri): Different from Mr. Tabuns' or different from mine also?

Interjections.

The Chair (Mr. Shafiq Qaadri): That is creative motioning by the NDP, for which we commend you. How can you even do that? He just created this in the last five minutes; how are you going to get two versions?

Mr. Victor Fedeli: Yes, I think his was a version in his hand.

The Chair (Mr. Shafiq Qaadri): Both are fine. We'd just like one. I think I'm going to have to get you to—

Interjections.

Mr. Peter Tabuns: I will. That one is now withdrawn.

The Chair (Mr. Shafiq Qaadri): Feel free to read it again, please, Mr. Tabuns.

Mr. Peter Tabuns: I feel very free to read it again.

I move that the Premier's office, the Cabinet Office, and all the individuals identified in Mr. Fedeli's motion dealing with electronic devices take all measures to preserve the electronic devices and the information contained in them until such time as the committee decides otherwise, and that the Clerk of the Committee so inform the individuals identified in the motion.

Mr. Chair, I'd just like to say: If we had known last summer that there was large-scale destruction of documents going on, we would have issued preservation notices at that time. This may be a lesson for any of us dealing with this in the future: that preservation is a critical piece.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. I think we have motion concordance. Unless there are comments, we'll vote. All those in favour of Mr. Tabuns's motion? All opposed? The motion carries, and the individuals will so be informed.

Interjection.

The Chair (Mr. Shafiq Qaadri): A few things? Yes.

Mr. Peter Tabuns: Yes, we have a few things about records.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes, and I have other things.

We have been in touch with the privacy commissioner's office. She's not available next week, but the assistant commissioner is available. Would you still want to meet and hear from the assistant commissioner next week?

The Chair (Mr. Shafiq Qaadri): Yes, but that's not the motion.

Mr. Victor Fedeli: I think we could make it for the next possible meeting date and provide the privacy commissioner with the dates that we're meeting and do it there.

The Chair (Mr. Shafiq Qaadri): Fine; accepted. So let's move on. Next.

The Clerk of the Committee (Ms. Tamara Poman-ski): Does everyone agree with that? All right.

The Chair (Mr. Shafiq Qaadri): I presume we are meeting next week, as I understand the House is in session. I don't think we've scheduled witnesses.

Mr. Victor Fedeli: We've all submitted our lists, right? So it's the NDP that's up?

The Chair (Mr. Shafiq Qaadri): Yes, but it's still undetermined when the House is sitting and so on.

The Clerk of the Committee (Ms. Tamara Poman-ski): So, as usual, for next Tuesday?

The Chair (Mr. Shafiq Qaadri): Fine; okay. Any other issues?

Mr. Victor Fedeli: What about my motion; what's happening with that?

The Chair (Mr. Shafiq Qaadri): This one?

Mr. Victor Fedeli: Yes.

The Chair (Mr. Shafiq Qaadri): The electronic device one?

Mr. Victor Fedeli: Yeah.

The Chair (Mr. Shafiq Qaadri): This is under consideration. It has been stood down, as you know.

Mr. Victor Fedeli: Okay.

The Clerk of the Committee (Ms. Tamara Poman-ski): Also, we have to decide about those confidential documents that you guys wanted to stand down until today. There was another letter—it's in your package—from the Ontario Power Authority. Remember, I'd mentioned there were documents that we decided were confidential and they were sealed and we're going to decide today what was going to happen to them.

The OPA sent us a letter identifying that apparently there are some that are confidential and not, and it was all just in one sealed envelope. Their recommendation was for the committee to review it in camera, or also, on page 2 of the letter, dated June 5, proposing that the committee would receive a new USB key within two weeks of June 4, identifying which documents were confidential and which ones weren't.

The Chair (Mr. Shafiq Qaadri): So they are undertaking to do the sorting that we've actually more or less, I think, asked them to do already?

The Clerk of the Committee (Ms. Tamara Poman-ski): We asked finance to do that. The OPA has offered to separate—

The Chair (Mr. Shafiq Qaadri): Before we get into the logic of this thing, shall we just do the same thing and say, "Please sort," and they give us—

Mr. Victor Fedeli: But we're getting both, right? We're still going to get both the confidential and the not, but the confidential is held until we decide? So they're going to do the sorting?

The Clerk of the Committee (Ms. Tamara Poman-ski): Is that agreed?

The Chair (Mr. Shafiq Qaadri): Yes, agreed.

Yes, Mr. Tabuns?

Mr. Peter Tabuns: We can see from the documents that were released to us from Cabinet Office and the Ministry of Finance that there are all kinds of rabbit holes you go down into when you start taking all these confidential documents—the documents that were released to us, the 41 boxes, the two USB sticks. Mr. Chair, it is not practical for us to pursue the course that we have been pursuing, and, frankly—

The Chair (Mr. Shafiq Qaadri): Sorry, what's not practical?

Mr. Peter Tabuns: To be holding those in confidence. I think they need to be made public so that we can pursue the investigation adequately. Before we go forward on that, I would move that those documents that had previously been released to committee be made public.

The Chair (Mr. Shafiq Qaadri): Two things: That overturns what we decided last week—

Mr. Peter Tabuns: Correct; it does.

The Chair (Mr. Shafiq Qaadri): And if that's the case, then we need that in writing.

Mr. Peter Tabuns: A five-minute recess?

The Chair (Mr. Shafiq Qaadri): I should also just mention that the documents have—we've already sent finance all those boxes to sort.

The Clerk of the Committee (Ms. Tamara Poman-ski): But they have the ones they've already received too. There are two different sets.

The Chair (Mr. Shafiq Qaadri): Fine. All right. A five- or 10-minute recess.

The committee recessed from 1021 to 1027.

The Chair (Mr. Shafiq Qaadri): Shall we move so we can make it to question period?

Mr. Peter Tabuns: I move that the documents previously released to the committee (44 boxes) by the

Ministry of Finance, Cabinet Office and Premier's office be made public.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Mr. Delaney?

Mr. Bob Delaney: Chair, I am going to have a great deal to say about this and I'm going to take a long time to say it. So if Mr. Tabuns wants to stand this down until Tuesday—I'm still going to object to it on Tuesday, but we're going to be here a long time if what we want to do is debate this motion.

Mr. Peter Tabuns: Then I am agreeable to standing down till Tuesday, given that in a few seconds we would have to rise anyway.

The Chair (Mr. Shafiq Qaadri): I will accept that, although—by the way, just to let you know, officially, the committee can meet where and when it wants, irrespective of question period or whatever.

Mr. Peter Tabuns: Useful information to have, Mr. Chair, but I think many of us may want to be upstairs.

The Chair (Mr. Shafiq Qaadri): Fair enough. I'll take it we'll defer this particular motion.

We are adjourned, probably till Tuesday next week.

The committee adjourned at 1028.

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**Standing Committee on
Justice Policy**

Members' privileges

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 11 June 2013

Mardi 11 juin 2013

The committee met at 1644 in room 151.

MEMBERS' PRIVILEGES

MR. PETER WALLACE

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy to order. I commend you on your recent exercise of democracy, and I now invite our first presenter to please come forward: Mr. Peter Wallace, secretary of cabinet and clerk of the executive council of Ontario. Welcome, Mr. Wallace, for your reappearance. I invite you to be affirmed by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Peter Wallace: I affirm.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wallace. Your five-minute introductory address begins now.

Mr. Peter Wallace: Thank you and good afternoon. As earlier stated, I'm Peter Wallace, secretary of cabinet and head of the Ontario public service. I appreciate that I have knowledge of a number of issues likely to be of interest to this committee, so I will cover only three brief points in my opening remarks.

First, document integrity is very important to the Ontario public service. When asked for records, the Ontario public service has made every effort to provide complete and timely disclosure, coordinated through legal counsel and defaulting to inclusion. I am proud of our work as public servants, and these documents are evidence of our ongoing professional analysis and unstinting advice.

The depth of disclosure associated with the Ontario public service documents has been unprecedented, including an override of long-standing legal standards with respect to solicitor-client privilege, contracted confidentiality provisions, personal privacy and cabinet confidentiality. I note that there are serious long-term public interest questions about the unintended but real consequences of the erosion of these standards, with implications for public administration policy advice and the ability of the government—any government—to contract in good faith.

Second, I wish to confirm that as head of the Ontario public service, my authority in document management

and indeed in all other matters extends to staff in ministries and in certain government agencies. I have no oversight whatsoever of employees of ministers' offices or of the Premier's office.

I do provide extensive advice and am central to the implementation of policy and administrative direction provided by the Office of the Premier or the government. In this context, aspects of recent advice and conversations with senior staff in the former Premier's office are referenced in the report of the Information and Privacy Commissioner. This report also reviews and comments on the relevant training offered to both government and political staff.

Third and finally, I have confirmed that Cabinet Office staff decommissioned email accounts of departing Premier's office staff through the corporate planning and service division on instruction of the Premier's office. This was carried through after receiving confirmation by the Premier's office that the accounts were properly managed in accordance with both record-keeping obligations and any outstanding orders or FOI requests.

This process was changed prior to the transition to the new Premier. Cabinet Office staff suspended the decommissioning of email accounts of staff leaving the Premier's office. No accounts have been decommissioned since that point in time.

I am also aware that the committee is considering an order to produce a range of physical objects, including BlackBerrys. Cabinet Office has retained custody of BlackBerrys, hard drives and some network drives available to the former Office of the Premier.

As the committee is aware, these matters may be considered by the Ontario Provincial Police. I note in particular that the chain of custody of devices may be important to the integrity of any investigation. The committee may wish to take this into account in considering whether to order production of these items at this point in time.

I will be pleased, with that, to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wallace. The floor goes to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair, and welcome back, Mr. Wallace.

In your opening statement, you mentioned that the Ontario public service takes document integrity seriously. We're here primarily today to talk about evidence destruction. Can you tell me why, when you were last here, you didn't mention that Mr. Livingston had approached

you about his intention to wipe email accounts clean? Why didn't you talk about that the last time you were here?

Mr. Peter Wallace: I provided extensive responses to extensive questioning at that point in time. The questions at that point in time were all relevant to documents produced in accordance with the earlier orders. The questions—and in fact the committee at that point had not turned its mind, to the best to my knowledge, to the production of documents by the Premier's office.

Mr. Victor Fedeli: It's hard to ask you questions about things that we don't know. That's what this whole scandal is all about, Mr. Wallace. I've talked about this in this committee before. When we had Minister Duncan sitting there, if we only knew then what we know now, the questions would have been quite different. His answers were too cute by half. We didn't understand why he threw an extra word in there or why he left a word out. Now that we've seen some of the documents, we now fully understand why he sat here and misled the committee. So I'll ask you again—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I'd just invite you to use more parliamentary language, please.

1650

Mr. Victor Fedeli: I'll ask you again. You were here for an hour and a half. You tell us that you take document integrity seriously. Why would you have not mentioned something so serious when we're trying to get to the bottom of this gas plant scandal and we have alleged—obviously correctly now—for over nine months that from day 1, we're missing documents, that there are holes in the documents? How could you have sat there and not told us that an incredibly senior person came to you and asked you how to destroy email?

Mr. Peter Wallace: One of the challenges facing all the witnesses in front of this committee is the length of time taken up and the complexity of the questions. The question entails a number of inferences which I reject fundamentally in terms of any application to myself or to the Ontario Public Service. There has been no effort whatsoever to be "too cute by half," or any of the other inferences that might be taken from the question. I fundamentally reject those, and you will find absolutely no evidence in any of your inquiries about any behaviour on my part or on those for whom I am responsible that indicates that in any way we have sought to mislead this committee or in any way that we have sought to withhold evidence. Now—

Mr. Victor Fedeli: Well, what I've not seen is evidence—

Mr. Peter Wallace: —one of these stunning things is that the committee itself had not, at that point, turned its attention, for whatever reason, to the production of documents by the Premier's office. As soon as the issue of the production of documents was raised and I became aware of a review by the Information and Privacy Commissioner, looking at issues that were relevant, of which I had practical knowledge, I went to and raised directly with the IPC—in this case, the proper author-

ity—my knowledge with respect to these matters. This provided very clearly the basis for her conclusions.

Mr. Victor Fedeli: Was it not relevant, and did you not have practical knowledge, of a senior official asking you for instructions to destroy evidence when you sat here at this table? You just didn't bring it up because it wasn't relevant?

Mr. Peter Wallace: I was answering questions. I provided a full and comprehensive statement that, I believe you will recall, provided extensive information that had not been available to the committee at that point in time. I could not—

Mr. Victor Fedeli: But that doesn't excuse leaving out information.

Mr. Peter Wallace: Again, the length of time of questions versus responses is remarkable. Again, I could not have reasonably been expected to have provided every piece of knowledge of information I have—

Mr. Victor Fedeli: But that's a critical piece.

Mr. Peter Wallace: —and I have a very substantial piece of knowledge.

Mr. Victor Fedeli: Pardon me, but you would have been reasonably expected, when you were asked, "Is there anything else you'd like to add?"; you gave an opening statement—you didn't think that the instructions about destroying evidence, at a scandal hearing about the fact that we don't have all the answers, was important?

Mr. Peter Wallace: If your effort is to put me on the spot, we can enjoy these conversations—

Mr. Victor Fedeli: No, I'm asking you a simple question.

Mr. Peter Wallace: But if your effort, Mr. Fedeli, is to discover information of relevance to this committee, why don't you ask me information and questions about issues that might be relevant to the committee? You may well discover that I have a good deal of other things to talk about.

Mr. Victor Fedeli: Okay. Let me reword my question to you. You've been secretary of cabinet throughout this entire debacle. You were secretary of cabinet at the time of the initial document request. You knew that the disclosure of documents was critical in getting answers. What have you got to say to the committee today, at length?

Mr. Peter Wallace: There is no conceivable answer to that question. May I helpfully point out that I have been secretary of cabinet since December 2011. This is not for the entire length of these issues. I was Deputy Minister of Finance; I'm a senior official. I have knowledge of these issues. I can provide reasonable responses to reasonable questions, and I look forward to doing that.

Mr. Victor Fedeli: All right, let me ask you a question. Before emails were deleted and then destroyed, was information transferred to removable hard drives such as USB disks or some other type of computer device?

Mr. Peter Wallace: I would have no knowledge of that because those obligations are properly, legally and administratively, on the Office of the Premier. They are not obligations that fall onto me or to any member of the

Ontario public service. This is something I spoke to in my opening statement, and this is a fundamental point.

Mr. Victor Fedeli: You don't know, then, who is in possession today of the portable, removable computer drive, USB drive, any other kind of computer device that this destroyed email has been transferred to?

Mr. Peter Wallace: I have no knowledge whatsoever of any practice by the former Premier's office. I would not know one way or the other whether or not they had extracted relevant records, or any records, from the media which they had under their physical control at that point in time.

I have disclosed to this committee that those media over which they had control at the time are now in the custody of Cabinet Office: the physical media, the hard drives, the network drives—

Mr. Victor Fedeli: Of whom?

Mr. Peter Wallace: The former Premier's office officials. The hard drives, the network drives, the BlackBerrys and the now-disabled, not deleted email accounts.

Mr. Victor Fedeli: Of all of the Premier's office officials, who were involved in the gas plant scandal at the time.

Mr. Peter Wallace: Of those who were part of the Premier's office at the period of transition.

I can also confirm to you—

Mr. Victor Fedeli: Who precisely has those?

Mr. Peter Wallace: I don't have a full list of the Office of the Premier's staff at the point of transition.

Mr. Victor Fedeli: No, who has the actual units?

Mr. Peter Wallace: Cabinet Office does. I'm not going to, because of the fact that these may be of interest to the Ontario Provincial Police, offer you a specific location, but I will tell you that they are under the secure custody of senior officials in the Cabinet Office.

Mr. Victor Fedeli: Since when?

Mr. Peter Wallace: Since they were retained prior to the point of transition.

Mr. Victor Fedeli: When was the date that they were retained?

Mr. Peter Wallace: It would be approximately the 25th of January, slightly after that.

Mr. Victor Fedeli: So since the 25th of January or slightly after that, the removal of drives, BlackBerrys, portable drives, USB sticks—

Mr. Peter Wallace: I'm careful in my language here because I have no knowledge of removable drives. Removable drives exist in the little USB keys and other things. I don't have any knowledge of what anybody might have done—that equipment that is signed and tracked; that equipment that Cabinet Office, acting reasonably, as you would expect us to do, would have knowledge of. BlackBerrys, network drives, hard drives and email accounts have been retained.

Mr. Victor Fedeli: Was Premier Wynne or her staff on the transition team made aware of the document destruction back at that time?

Mr. Peter Wallace: There were no conversations with Premier Wynne or her transition team.

Mr. Victor Fedeli: When did they become aware, then?

Mr. Peter Wallace: I have no knowledge of when they became aware of that. These would be conversations that I would reasonably expect would take place on a political-to-political level. I would remind you that these are issues that you have raised repeatedly in the Legislature. They would be issues that are properly dealt with amongst political staff and through the transition associated with—

Mr. Victor Fedeli: I raised them in the Legislature, but that's question period, not answer period, believe me.

Mr. Peter Wallace: I merely point out that these are issues of common knowledge.

Mr. Victor Fedeli: Who in either Premier McGuinty's office or Premier Wynne's office have you spoken with about the deletion of email accounts?

Mr. Peter Wallace: I have had no conversations about the deletion of email accounts with Premier Wynne's office. They have not asked me, nor have I provided information—

Mr. Victor Fedeli: How about Premier McGuinty?

Mr. Peter Wallace: Just let me qualify that with one other critical exception, which is, they have asked for, a number of times, support from Cabinet Office, as they're entitled to do, in order to set up document management protocols and other pieces. They have been proactive in their outreach to us.

With Premier McGuinty's office, there are two central times in which I was engaged by the office in conversations around document management—

Mr. Victor Fedeli: Did it strike you—

Mr. Peter Wallace: Honestly, you do not want me to continue the point I was about to make? Never mind.

Mr. Victor Fedeli: Do you want to carry on? Please carry on.

Mr. Peter Wallace: It would be very helpful if you listen to the point.

Mr. Victor Fedeli: Please carry on.

Mr. Peter Wallace: Because then you will not accuse me of—

Mr. Victor Fedeli: I haven't accused you of anything. I'm just curious why you didn't mention it.

The Chair (Mr. Shafiq Qaadri): Gentlemen—

Mr. Victor Fedeli: Go ahead, please, Mr. Wallace.

Mr. Peter Wallace: The two occasions are—in mid-August or thereabouts, the Premier's chief of staff expressed an interest in understanding the mechanics of the operation of the internal email process. He indicated to me that he was concerned that there would be the potential, as email accounts were repurposed or as equipment was repurposed, that information would be inadvertently available to successors. In other words, as they flip on a laptop or as they flip on something else, email records would be retained in that context. So he was interested in the mechanics by which documents could be deleted from, and he stated this innocent purpose for deleting—for how you would manage an email account.

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We provided him with background information, connected him with the appropriate officials at the associate deputy minister level working for me, who explained to him the mechanics of how you delete a document and then how a document is deleted from the trash, and also the protocols and mechanisms by which tapes are backed up for disaster recovery purposes as part of the routine backup processes associated with the retention of government records for disaster recovery purposes.

As well, in late January—and these are now the conversations referenced by the Information and Privacy Commissioner report—I was approached around the potential for access to administrator passwords. The rationale given for access to administrator passwords would be to address any residual issues associated with hard drives, to ensure that hard drive information would not be inadvertently available to successors.

In that context, we did precisely what you would expect senior officials to do, which is: We caucused with our senior officials; we provided information back to the Premier's office about how this is done mechanically. It turns out that this is a moot point. They already had the administrator passwords; didn't need to bother asking us. But we took the added and critical precaution of reminding the senior individual in the Premier's office that any action they took would need to be consistent with various elements, various approaches. That would include, obviously, FIPPA and the archives aspect. This is the email—the extensive, very careful email—that is referenced in the IPC report.

As well, I provided informal or verbal advice to the extent of the advisability of continuing on a pattern or, you know, removing records, given that this was a substantial subject of interest in the Legislature and elsewhere, and observing that, at a minimum, the optics of having absolutely no records or of overriding hard drives would be very challenging and might remove a defence of innocence, of inadvertence or other aspects.

So I provided, as you would expect, the technical knowledge and, as you would expect, the policy advice and the broader context associated with those aspects. That precise information was disclosed by me in response to questions by the IPC—again, precisely, Mr. Fedeli, as you would expect a senior public servant to do.

Mr. Victor Fedeli: Two questions, then. Number one: Who is the senior individual you're referring to? Could you name that person, please?

Mr. Peter Wallace: David Livingston.

Mr. Victor Fedeli: Okay. Secondly, in your statement you said—there's two dates: the August date, and you said it was, again, given to you under the guise of using it for an innocent purpose—words around that effect.

Mr. Peter Wallace: I did not—just to be very clear, it was about mid-August, and I did not say “guise” or anything like that. He provided me with an explanation—

Mr. Victor Fedeli: That it was what, again?

Mr. Peter Wallace: He provided me with an explanation about why he would inquire about these aspects.

Mr. Victor Fedeli: Which again was? Because what I'm going to ask you is: Did you believe that explanation?

Mr. Peter Wallace: The explanation was related to—and there's a common experience that a number of people have had, which is that when they return to the Office of the Premier or in fact when they return to Cabinet Office, they turn on their accounts. What has been left—they're put back to where they were when they left a number of years before.

The other area he raised was that there is the potential, if accounts are not deleted or disabled, that they may receive emails, and outside individuals or other individuals may send emails to somebody who is not there, not get a response, and believe the person is there.

So he raised these two issues as an approach to why he would be interested in the mechanics of document deletion.

Mr. Victor Fedeli: When you were told that by Mr. Livingston, did you believe it was for those innocent purposes?

Mr. Peter Wallace: I, again, observed that document management issues were at the heart of a very, very active period of public discussion, that there were legitimate issues brought in front of the Legislature associated with contempt, that those issues were around the production of documents. But of very critical importance here—and I do provide Mr. Fedeli advice on legal-based and other precedents. It is very important to understand that throughout all of this period, from that period and in fact all the way through until relatively recently, this committee had not asked for, had not requested the production of any documents from the Office of the Premier, so at this period in my conversation with David Livingston and, in fact, during my period of conversation with this committee, those issues had not been raised in this committee.

Mr. Victor Fedeli: So do you believe he was asking you that advice for the innocent purpose that he gave you?

Mr. Peter Wallace: I provided more generalized advice around the nature of that.

Mr. Victor Fedeli: But I'm asking you: Do you believe that's why he wanted it?

Mr. Peter Wallace: That's completely a speculative question.

Mr. Victor Fedeli: Okay. So why do you think he wanted to destroy the thousands of government documents?

Mr. Peter Wallace: I have no knowledge of him destroying thousands of government documents. You'll have to rephrase the question.

Mr. Victor Fedeli: Okay. What actions did you personally take, then, other than discussions with him, when Mr. Livingston told you he wanted to scrub the hard drives? What physical actions did you take?

Mr. Peter Wallace: There would be no physical actions available to me.

Mr. Victor Fedeli: Okay.

Mr. Peter Wallace: And do remember that at this point in time, no committee had asked for this information. This was, I think, an astonishing oversight by the committee, but no committee had asked for that information.

Mr. Victor Fedeli: Well, we can go through the fine points of that.

How many email accounts do you think were wiped?

Mr. Peter Wallace: Let me just explain, though, the process here, because it is important. The wiping of the email accounts is a trivial mechanical thing done by individuals in Cabinet Office as an administrative exercise. We, however, ensure that the Premier's office is aware—because the government of Ontario, the public service of Ontario, takes its document responsibility seriously. I, for example, am the custodian of cabinet records—acutely aware of these things.

Mr. Victor Fedeli: So you don't know how many were wiped?

Mr. Peter Wallace: We provide them—we provide the Premier's office with a list of any outstanding FOI or any outstanding litigation or any outstanding document requests associated with these issues. Then we secure from them a statement that they have addressed those. Once that's done, we've satisfied all of our requirements, then it is deleted.

I would expect that the number of changes in email accounts would be roughly equal to the number of Premier's office staff who left, with one critical exception, which is, of course, the period at the point of transition when we changed.

Mr. Victor Fedeli: So do you know who the actual individuals were whose emails were destroyed?

Mr. Peter Wallace: And the accounts purged? It's very important to make a clear distinction here: We would not be destroying emails.

Mr. Victor Fedeli: But you talked about the tapes as well, getting into the—getting the access to get those tapes—

Le Président (M. Shafiq Qaadri): Merci, monsieur Fedeli. Je passe la parole à M. Tabuns. Vous avez 20 minutes.

Mr. Peter Tabuns: Thank you, Mr. Wallace, for returning today and for being prepared to respond to our questions. I have one or two that follow from your earlier remarks, and then I'll go into mine.

If I heard you correctly, you said that there were a number of email accounts that were deleted at the direction of the Premier's office in the summer of 2012. Did I hear you correctly?

Mr. Peter Wallace: That is a correct statement. I didn't state that directly, but that is a correct statement, yes.

Mr. Peter Tabuns: Okay. And when we say that the Premier's office directed the cleaning out, the deletion of these email accounts, which person in the Premier's office directed this?

Mr. Peter Wallace: The wrapping up of email accounts would be a perfectly routine business. It's done

in all businesses. There's no expectation in the archives act or anyplace else that records be kept forever in digital form, backed up in that approach. So it is routine that as individuals leave the Office of the Premier or any place of employment within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down and the documents would be addressed.

What would happen in this instance is we would ensure, we would offer the program area, in this case the Premier's office, because we have no direct responsibility for them—we don't do this for them; they do this—an understanding of their obligations associated with any outstanding FOI, litigation or other potential requests. Once they had confirmed back to us that those records had been appropriately managed, Cabinet Office would, at a technical level, delete the accounts.

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To be very clear, normally these instructions would come from an administrative level within the Premier's office, and normally the actions associated with wrapping up an account would be done at a technical level within the levels of the Premier's office. This isn't something that this is business as usual. This would, only in the most extreme circumstances, come up to my level.

Mr. Peter Tabuns: You said that it was the Premier's office that asked that these accounts be deleted. Who in the Premier's office?

Mr. Peter Wallace: That will be specific as to the account being deleted. It would be different people providing the assurance that it was okay to go ahead and delete the account for a now-departed Premier's office staff. It would likely be the administrative person in the Premier's office who had responsibility or had been assigned to the individual who had left. So it would be a range of individual staff working at the clerical or intermediate level in the Premier's office who would provide the Cabinet Office with both the assurance that it was all right to delete the accounts and the direction to go ahead and do so.

Mr. Peter Tabuns: I would ask you—because I assume you don't have this information at your fingertips—to provide us with the names of those who assured your staff that proper steps had been taken to preserve records under the Archives and Recordkeeping Act and, having given assurance, then asked that accounts be deleted.

Mr. Peter Wallace: Not surprisingly, I've looked into this and I will provide you with that. In most instances, these are written. In some instances, they are verbal and backed up by emails from or records to file from staff. In some instances, there is no formal record, but I believe that in the majority of instances we do know who asked and who certified the direction. I think we'll discover that in the issues that this committee is most likely most interested in, we have a pretty good knowledge of those.

Mr. Peter Tabuns: Okay. If you can provide that to this committee within the next week, that would be appreciated.

Mr. Peter Wallace: I'll briefly seek advice about whether or not we would require an order for that be-

cause of privacy or other issues, but I will check on that and be back to you momentarily.

Mr. Peter Tabuns: Okay. Cabinet retained hard drives, network drives etc. around January 25.

Mr. Peter Wallace: Yes.

Mr. Peter Tabuns: What motivated this? Because I would say, offhand, that seems unusual.

Mr. Peter Wallace: It is. It is a little bit unusual, and it's not a decision that I made. It was an administrative decision by individuals in Cabinet Office who felt that during a period of transition the normal processes might not apply. They were observing that there was an intensity associated with this process with which they were uncomfortable, so they simply changed the practice from deleting an email account to disabling an email account.

Disabling has the same effect in terms of the earlier discussion; nobody can get access to it. It doesn't receive emails or any other issue—so the issues raised earlier by Mr. Livingston to me as concerns would be addressed in that context but it would not eliminate whatever was in that email account, whether it had information in it or not. It would preserve the structure and integrity of that email account.

Mr. Peter Tabuns: And who actually had the presence of mind to say, "We need to physically preserve these documents and accounts"?

Mr. Peter Wallace: I believe that will be Linda Jackson, who was the chief administrative officer of the Cabinet Office.

Mr. Peter Tabuns: And did she consult with you before she took this step?

Mr. Peter Wallace: I do not recall her consulting with me on this specific thing, and it's something I do believe that I would have recalled.

Mr. Peter Tabuns: Okay. When David Livingston came to you about wiping clean the hard drives, what specific verbal advice did you give him?

Mr. Peter Wallace: This was an interesting and challenging discussion, and it was occurring at an interesting and challenging time in Ontario public policy, without a lot of precedent. We're quite familiar with the transition processes between governments, from one government to a government of a different political party. This is written about extensively in the literature, and the protocols are certain. We were challenged at this time by the decision-making process and a number of other processes.

So when Mr. Livingston approached me about this, I had a conversation with senior officials within my office, and counsel, and we determined basically what would be expected of us. In that context, we reached the determination that what would be expected of us was twofold, both of which we carried out. The first would be, we're not there to obstruct the Premier's office; we're there to implement their will. So we quickly determined whether or not what they requested was feasible, whether or not there were any laws being broken—anything along those lines. We very quickly determined that the question was actually moot, that they actually had access to administrator passwords, and if only they had simply asked

within their own offices, they would have discovered that this was a straightforward matter, that they already had these access rights and could, frankly, notwithstanding other issues of accountability, from our perspective, do whatever they wanted with that information. It was their information to hold, or other aspects, subject to all of their other accountabilities, legal and otherwise. But all of those accountabilities, as I've been clear, rest with them. So we determined that.

Notwithstanding that, we ensured a meeting with a senior information official, David Nicholl. David Nicholl took the opportunity verbally, backed up in writing in the email that's been reproduced in the IPC report, to clearly lay out the obligations and the range of obligations associated with records retention in that context.

I also provided the informal policy advice, of which I've already spoken, that in a situation in which there would likely be eventual interest—although the committee had not requested that and there was no legal obligation associated with that whatsoever—there would likely be questions about, if records were not available, why were they not available, and the absence of those records would make innocent explanation—it would leave the government open to inference, which is clearly being drawn right now.

So in that context, I provided precisely the advice that I believed that a thoughtful public servant would provide to the political staff they serve.

Mr. Peter Tabuns: What was the response you got from the chief of staff, Mr. Livingston, when you gave him this advice?

Mr. Peter Wallace: This would have been a very brief conversation. I don't recall him expressing great deals of satisfaction or indicating that the advice was particularly useful to him in that context. From our perspective, it was an extremely busy time. They already had access to the administrator passwords. We had ensured in writing that they were aware of their obligations. We moved on to other items.

Mr. Peter Tabuns: Did you make the former Premier aware that this was going to happen?

Mr. Peter Wallace: There would be no practice of making the former Premier aware of decisions of that level or that order of magnitude, so I did not.

Mr. Peter Tabuns: I'm sorry you didn't, actually; I'm sorry you didn't.

Did former Premier McGuinty ever make it clear to you and to his staff that he expected records to be maintained in accordance with the law?

Mr. Peter Wallace: I recall no conversations with Premier McGuinty regarding records management issues at all.

Mr. Peter Tabuns: Are you aware of any information that was transferred to the Archives of Ontario in this period?

Mr. Peter Wallace: I'll have to parse the question for what you're asking and what I think you're asking.

Mr. Peter Tabuns: Okay.

Mr. Peter Wallace: I am not specifically aware, but there is a routine practice amongst public servants—the

public servants I'm responsible for—of archiving a variety of information and shipping it off to archives. I would have no knowledge whatsoever—would never be expected to have knowledge—of the detailed records management practices or lack thereof in the Office of the Premier. Under this government or under any other government, Cabinet Office officials would not be expected to—would not in fact by statute or any other process—be aware of the record management processes of the Office of the Premier; they're statutorily and in every other sense separate.

Mr. Peter Tabuns: So given the intensity of this issue, given the advice you had given to the chief of staff, the unprecedented taking into custody of hard drives, did you, out of curiosity and not out of statutory demand, contact the archivist and say, "Did they actually ever turn anything over to you from all those accounts that were deleted?"

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Mr. Peter Wallace: If I may be very direct—

Mr. Peter Tabuns: I hope you will be.

Mr. Peter Wallace: —the archivist issue is of relatively little interest to me. The volume of material created—and the IPC and others may have a disagreement with this perspective. The issue here, from my perspective, is not whether or not the Premier's office or one of the 63,000 people who work with me in the Ontario public service are properly archiving information. The question of the day, and the question that remains before us, is, fundamentally: Was there information of significant public interest that ran the risk—that could be deleted as a result of these discussions?

I know absolutely that the information shared by political staff associated with the gas plant issue, shared by political staff with members of the Ontario public service or with members of the Ontario Power Authority, was retained appropriately and has been produced over and over again in response to the document elements.

The question of interest would be whether or not the documents between the Premier's office or other political staff, or between political staff and outsiders—and I would have no knowledge associated with that. I would not, in any event, ever pay detailed attention to the archives issue. The only issue that I would advise on is essentially the practice of—some records should be retained. It would be a reasonable expectation—and the IPC report speaks to this—that there would be some records that would be relevant to that context. If there were no records available, it would leave the government open to an inference from which the government may be ultimately uncomfortable.

Mr. Peter Tabuns: Well, we in the NDP filed a freedom-of-information request in November of last year and found that documents that have been in the custody of the OPA and staff at the Ministry of Energy—documents from the Premier's staff—were no longer in existence when we came to ask in November, which is when we started asking about the destruction of documents.

Mr. Peter Wallace: In that context, yes.

Mr. Peter Tabuns: Yes, your intuition was correct. We infer, when we see documents destroyed by people involved with sensitive files, that they're covering things up. Clearly, that impacts our view of the government.

Mr. Peter Wallace: Just to be clear, I have no knowledge and can draw no inferences of things being covered up. I can only state very clearly that I provided advice as to the likely inferences that would be drawn associated with that. I have no knowledge of any of what may or may not have been in those documents, nor could I ever have had that knowledge. I simply provided what I think you would expect the reasonable advice of a senior public servant to be, which is around the mechanics. And then what we do in Cabinet Office is, we support the Premier's office, through any government, and offer some level of support and some level of understanding about what the broader ramifications of such an action might be.

Mr. Peter Tabuns: Given that you had taken these unusual steps in physically securing hard drives, that government services had put email accounts on hold rather than deleting them, did you discuss this with the new Premier when she came into the office, to tell her, "We have significant matters to deal with here around the destruction of documents?"

Mr. Peter Wallace: I did not.

Mr. Peter Tabuns: Do you know why it is that, as of her coming into office—and she says this repeatedly in response to questions in question period—we have a whole new regime for record-keeping? Did you, in fact, discuss with her this new regime for record-keeping?

Mr. Peter Wallace: I need to separate out the conversations with the Office of the Premier from the conversations with the Premier.

Mr. Peter Tabuns: Okay.

Mr. Peter Wallace: The conversations with the Premier have been clear. They have not been retrospective discussions; they've been prospective discussions. The conversations I've had with the Premier have been consistent with her public statements around, "We expect you to provide documents requested by the committee." There has been no effort by this government or by the former government to influence, to tell us to withhold, redact, or in any way alter the timing or flow of information requests directed to the public service. There has simply been none of that, to the very best of my knowledge, and I would likely know if there had been.

The conversations with the Office of the Premier are slightly more complex because subsequent—there has been a request by this committee, as I understand it, for Premier's office records. In order for the Premier's office to fulfill those requests, we did in fact provide the current Premier's office with the access passwords for the disabled accounts so that they would have an opportunity to see whether or not there were records responsive to this committee's request. They did not provide any records, so I can assume that there were no records available and that those were either blank accounts or had no responsive records.

To be very clear, I've had no conversations with the Premier about the mechanics of this, or at a senior level with her office, but within my office, within Cabinet Office, we have provided officials within the Premier's office with the mechanical means to fulfill this committee's request to search email accounts of the former Premier's office, and of course they already have the capacity for the current Premier's office.

I apologize for the technical detail, but it is frankly quite complex, these items. It required a little bit of researching, and I may be wrong on the very details and the specifics of it; I will not be wrong on the overarching approach.

Mr. Peter Tabuns: One of the responses of the former Premier to the assertion by the OPP that they were going to investigate this matter was that there needed to be clarity on what records were to be retained and which were not to be retained. I've had a chance to look at the Premier's Office Records Schedule document. Do you find a lack of clarity in those documents?

Mr. Peter Wallace: I have never looked at the Premier's Office Records Schedule. As I've said, that's not in my pay grade. That's not something with which I or other secretaries of cabinet would be clear.

I believe that the basic intent of freedom of information and other information—that that information created by the public is available to the public—is broadly understood in our political culture.

Mr. Peter Tabuns: And I would have to say, having looked at the act, the definition of “transitory” is pretty clear, if you're familiar with the Archives and Record-keeping Act.

Mr. Peter Wallace: I am familiar with the definition of “transitory” in that context. I have never found it particularly complex myself.

Mr. Peter Tabuns: No, nor did I. Does the chief information officer for Ontario report to you?

Mr. Peter Wallace: Yes.

Mr. Peter Tabuns: Did you discuss this matter with him or her? Sorry, I don't know—

Mr. Peter Wallace: I have. It's David Nicholl. I've had a number of conversations with David Nicholl, likely in mid-August, although I'm not absolutely sure about that conversation—that's getting on a year now—and more recently either directly or through staff—I forget the actual mechanics of it—at the end of January.

Mr. Peter Tabuns: Did he express concerns to you about the way these records were being managed?

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

Mr. Bob Delaney: Mr. Wallace, thank you for coming today. I wanted to start by asking you about some of the steps that Premier Wynne has taken with regard to openness and transparency within the government. You're aware, I assume, that the Premier's office recently coordinated mandatory document retention training for all political staff at Queen's Park?

Mr. Peter Wallace: I am. That's correct.

Mr. Bob Delaney: And to talk about some of the other steps the government has taken to be open and transparent on this particular issue before the committee: Just a quick recap. The Premier called in the auditor to review the Oakville relocation. The Premier recalled the Legislature right on the legislative calendar schedule and offered the opposition a select committee, which they rejected, and then she significantly expanded the scope of this committee. The Premier has testified at this committee, along with several other members of both the current and the former government. And finally, the government has provided tens of thousands of documents in response to committee motions, including some 30,000 from the Premier's office itself.

I understand that a number of the materials that have been disclosed include documents from Cabinet Office. Can you confirm for the committee that your office has acted in good faith to turn over documents as per the committee requests?

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Mr. Peter Wallace: I can confirm that, and I can confirm that that practice in Cabinet Office, the Ministry of Energy, the Ministry of Finance and all other areas where responsive records or to which the committee has directed motions—whether under Premier McGuinty or under Premier Wynne, the Ontario public service has produced those documents to the best of our ability. There are sometimes challenges in doing that in terms of overlapping committee motions, and there have been some timeliness and other issues, to be certain, but there has been an overwhelming effort and production of responsive documents. The responsive documents have been produced largely, almost exclusively, on the basis of legal advice, working with counsel, working to interpret the committee motions in both the legally defensible and trying to understand the true intent behind those motions. That very substantial disclosure process occurs to this moment and has occurred in the absence of political direction; it's been consistent the entire time.

Mr. Bob Delaney: Thank you. And about the Premier's office itself, could you offer me a comment in terms of their commitment within that office to proper record retention and disclosure?

Mr. Peter Wallace: The Premier's office has, as I understand it, expressed a very clear interest in ensuring that they understand their responsibilities under the archives act and under similar legislative aspects—freedom of information and protection of personal privacy, other elements—in making sure that they are fully up to speed with respect to those obligations, formal and informal, in that context.

As I understand it—and this is indirect because, as I've indicated, I do not have any formal authority or supervisory capacity with respect to the Office of the Premier, but I understand anecdotally that the chief of staff to the current Premier has been in contact with the Information and Privacy Commissioner to engage interaction, seek advice and, I believe, establish best practices going forward. There's certainly been an element of outreach and approach associated with that.

Mr. Bob Delaney: And on the topic of the Information and Privacy Commissioner, in specific terms the response from the Premier's office to the issues raised by the Information and Privacy Commissioner: What's the reaction of Premier Wynne's office to the report from the Information and Privacy Commissioner?

Mr. Peter Wallace: Again, I'm not privy to the full context of the Premier's office reaction. They're legally and administratively separate from us. We do their administration for them, but it's their responsibility. But their approach, as I understand it, has been one of working to understand the obligations. As I understand it, they have not rejected the report. They've indicated a desire to work within the context of the report and fully fulfill obligations associated with all of the various statutory and policy expectations associated with records management, records retention and those elements.

Certainly any time there's a question about the way things are dealt with, they are defaulting to disclosure and they are defaulting towards record retention in their instructions to Cabinet Office around the treatment of material at this point.

Mr. Bob Delaney: Okay. Thank you.

A few questions, then, around the records retention act. I want to ask you a little bit more about that Archives and Recordkeeping Act that was updated last in 2006, I understand. So not all records are required to be kept under the act; correct?

Mr. Peter Wallace: I'm not an expert in the act, but as I understand it, yes, there's a range of decision-making records and other aspects that are required, but transitory and other records are not required to be kept.

Mr. Bob Delaney: Yes. I think Mr. Fedeli has helpfully provided a much more detailed description of it. Some of the records that are not required to be retained pursuant to the common records series are called "transitory records"—it's a phrase that you've used yourself—and are defined as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

Could you explain in a little bit more detail the types of records this definition would capture? Perhaps you could provide a few examples.

Mr. Peter Wallace: I could take a stab at that, but the committee will have to defer to experts on this. When I joined the government, phone messages were answered by a receptionist who wrote down on a little pink slip and gave you the little pink slip to say that so-and-so called, and their availability or whatever. You returned that call. That would be a transitory message in that context. An email or digital equivalent of that would be the constant pinging back and forth that's "call me" or setting up meetings or other aspects. That's what I would understand to be a commonsensical definition of transitory records. I don't have the act in front me, so it's not something I've put considerable thought into.

Generally speaking, the decisions around what is actually, in my world, in Cabinet Office world, archived or

not archived is dealt with at an administrative level. It's not something that cabinet secretaries, deputy ministers, associate or assistant deputy ministers are routinely involved with. To be very clear, Cabinet Office in this context has custody of cabinet records, and we clearly know what those are and we clearly distinguish between what's a cabinet record, a submission to cabinet, a cabinet minute, all of those other things, and the transitory record that may be the email that sends that along.

Mr. Bob Delaney: In other words, like a letter of transmittal.

Mr. Peter Wallace: A letter of transmittal, or other aspects. There's always a little bit of a challenge in terms of where these things are, because the volume of information—as has occasionally been a frustration to the committee—produced by a large number of people working in good faith churning over issues is stunning.

Mr. Bob Delaney: When staff received training from the Information and Privacy Commissioner, they were told that transitory emails constitute a large proportion of their inboxes, and I believe in their training they were told that that number would be roughly 60% to 70%. Does that seem accurate in your—

Mr. Peter Wallace: That seems reasonable to me, but I don't actually have knowledge of the IPC's training of political staff or, frankly, of anybody's training of political staff in that context. It doesn't seem unreasonable to me, but I can't formally confirm that. I apologize for that.

Mr. Bob Delaney: That's okay. An article I read not long ago said that in most people's personal email boxes the transitory ones exceed 90%. That may be likely because so many types of records that would fall into this transitory category would be such things as surplus duplicates, failed output records, records of short-term value, intermediate records, draft documents and working materials. Could you expand on that a little bit and provide some examples of these types of material?

Mr. Peter Wallace: I can't speak for the Office of the Premier or political offices' perspective, but from the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant. My understanding is, the archives act is designed to facilitate that appropriate public-interest-based access to information within that context.

Mr. Bob Delaney: I understand as well that such things as communications and issues management positions for political staff—for example, materials that are created daily that are only useful for the pertinent issue brought up on that day and are not related to decision-making and have no usefulness in the weeks following are also deemed transitory in nature and not required to be maintained or retained. Is that correct?

Mr. Peter Wallace: That would be an individual judgment call that I would—I hate to be unhelpful here—

not find as obvious as that, because some momentary communications issues are ultimately of substantial public interest later on. So it would be difficult for me to make a straightforward judgment on those things in the absence of fact-specific elements, and that is the art of understanding the information requirements.

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Mr. Bob Delaney: The common records series discusses a category of records deemed as private, and that would include personal records as well as constituency and, if they exist, party records. So the Information and Privacy Commissioner described that class of records held by a minister as follows: "There are two general categories of records in the office of a minister and the Premier: (1) public records and (2) personal, political, and constituency records. The requirement under the ARA"—which means the Archives and Recordkeeping Act—"to have records retention policies in place applies only to the first category of records, and not to the second"—which is to say, public records.

So I just want to be very clear on what these distinctions mean. My understanding is that there are certain records that are not subject to the ARA or to the freedom of information and privacy act, correct?

Mr. Peter Wallace: It's challenging to sort out the taxonomy of this, but there are three different concepts at play here. We have the ARA, that you have in front of you that I don't have in front of me—and they may be excluded from that act; I don't know.

We have freedom of information and protection of privacy. They're not excluded from that act, but there are either mandatory or optional requirements to withhold the information from public disclosure—optional in some cases; mandatory in terms of privacy; other elements. So there are those aspects.

Then the third aspect—that's not being discussed in this context but is important—relates to the powers of this committee. As I indicated, the powers of this committee override all of those usual distinctions. The powers—we sought legal advice on this, and that is an important construct in this environment.

Mr. Bob Delaney: Okay.

Mr. Peter Wallace: By "this committee," I mean, legislative committees, motions, estimates committee, other aspects. I use that informally. I don't mean specifically the standing committee on justice.

Mr. Bob Delaney: No, I understand. I understand.

So in specific terms about the retention schedule for, in this case, the Premier's office, the schedule speaks to transitory records and a number of other exclusions; for example—and I'll quote from it—"materials belonging to the Premier and the Premier's parliamentary assistant." Am I correct in my reading of this category that it would exclude constituency files and records that may be related to either caucus or to party work?

Mr. Peter Wallace: I'm hazy on this, but my understanding is that political staff have access to two separate mechanisms for retaining information. It is my understanding that—let me put it this way: that that's entirely

within their world. I have no knowledge of that environment within that context, that that's how this relates to other accounts and other things. I just don't know how it relates to the provision of political information. I believe I have an understanding that there is a long-standing prohibition, and I could be incorrect on this, against the use of government of Ontario equipment—phones, I&IT, physical facilities—for party work, so I would not expect there to be party information stored on IT servers associated with the government of Ontario. But I don't know that; that's a recollection. I apologize for being hazy on that, but that's not something I've ever had an opportunity to explore and would not expect to explore.

Mr. Bob Delaney: I think all of us are walking down this path for the first time and understanding what it may mean in this context, so thank you.

There's also an exclusion contained in that schedule for records held by another branch of government. For example, I assume that would include materials prepared by the public service for a minister's briefing. There would be no requirement to keep duplicates of those records, correct?

Mr. Peter Wallace: In general, there will not be a requirement to keep duplicates. What constitutes a duplicate is obviously a fact-specific situation. I'm not familiar with the detailed exemptions around other governments or other pieces.

Mr. Bob Delaney: Okay. I'll talk to you a little bit about personal email accounts. As you're well aware, of course, government business is subject to freedom of information no matter where it takes place. But it's also important to note that matters not related to government business should not be conducted on government computers; for example, personal, political or partisan activity in which it would be manifestly inappropriate to use government resources. Would you agree with me so far?

Mr. Peter Wallace: I would.

Mr. Bob Delaney: So there may be other instances, then, where the use of a personal email account might be appropriate. Again, I'm coming back to, as an example, during transition, before people are situated in what turns out to be their permanent offices.

Mr. Peter Wallace: Yes.

Mr. Bob Delaney: Chair, how am I doing on time?

The Chair (Mr. Shafiq Qadri): Three minutes.

Mr. Bob Delaney: Three minutes. Okay.

I want to ask you about the issue of IT staff deleting email accounts. The practice of deleting accounts after a staff person leaves the government on both or either of the political and the public service side—that's not new, right?

Mr. Peter Wallace: No. That's routine, and you would expect that once records were retained and are dealt with in the appropriate way, there would be no need to retain.

In many respects, IT is astonishingly expensive. We know that information requirements are burgeoning at something close to an exponential rate. So there is going

to be a clear, pragmatic requirement to remove, from IT storage and routine backup, information that is redundant for business purposes. It's all backed up for master management purposes, for a period of time, and then the question is—but, yes, it is routine that email accounts be deleted.

Mr. Bob Delaney: Coming back to your point about the expense of IT with respect to specific electronic devices such as computers and BlackBerrys: It would, I assume, be common practice to clear all of those devices after a staff member departs so that they can be used for new and incoming staff?

Mr. Peter Wallace: That's correct. There's a nuance in that. Obviously, the accounts don't take up physical space. Personal computers are repurposed. There will be different uses of the hard drive, depending on the sensitivity of the job and the person who held the role before and other aspects.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Wallace: BlackBerrys, I understand it, are not routinely repurposed, at least with the Office of the Premier, the reason being that they have unique identifiers and other aspects. So they are not, as I understand it, generally sent out. They are generally taken out of circulation.

Mr. Bob Delaney: Okay. Chair, I think I'm going to stop there.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

Mr. Fedeli: 10 minutes.

Mr. Victor Fedeli: Thank you, Chair. I wanted to pick up where Mr. Delaney was going. He asked you a question about using government resources, i.e. government email for personal use, and you don't condone that.

Mr. Peter Wallace: That's correct. I'll provide a little bit of a qualification on that in response to the next, but yes.

Mr. Victor Fedeli: Let me ask the opposite of that. Would you condone the use of Gmail accounts or personal accounts to conduct government business, including gas plant scandal materials?

Mr. Peter Wallace: In the real and practical world, it's very difficult for people who work, myself included, on a routinely long basis to avoid using their personal emails. We carry BlackBerrys with us at all times. That is how my family will find me. That is how I will make dinner. Those will be things—in the same way that we use phones to set up doctors' appointments and other things.

Mr. Victor Fedeli: Sure.

Mr. Peter Wallace: So there will obviously be some transgressions associated—

Mr. Victor Fedeli: Go to the opposite of that.

Mr. Peter Wallace: Let me speak to the specifics of the situation, as I understand it, and you may be aware of other situations you want to raise with me.

Prior to the Liberal Party of Ontario choosing Kathleen Wynne as Premier, I was approached by mem-

bers of transition teams from the likely winners of that contest, who sought to engage me in—

Mr. Victor Fedeli: We only have 10 minutes.

Mr. Peter Wallace: My apologies.

Mr. Victor Fedeli: When Mr. Delaney asked you the question, he said, "Is using it wrong?" and you said, "Yes." That was a good, nice, short answer.

Mr. Peter Wallace: Okay. Fair enough.

Mr. Victor Fedeli: So is using Gmail for government gas plant work wrong?

Mr. Peter Wallace: If that Gmail were not disclosed, and if that Gmail were used for a deliberate purpose of excluding and avoiding accountability for the documents, absolutely.

If that email were used incidentally and fully disclosed and used as part of a regular process and it was only transitional and only for a moment in time, obviously I would take a different view of that.

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Mr. Victor Fedeli: But if you saw a couple of hundred emails from an individual over a short period of time talking about a gas plant and it was about his using Gmail, that would not be appropriate?

Mr. Peter Wallace: That's a hypothetical question. I can't answer that from that standpoint.

Mr. Victor Fedeli: Earlier—

Mr. Peter Wallace: I can say that I used email accounts for transitional, straightforward purposes.

Mr. Victor Fedeli: Earlier you said that emails were not the point and the archivist is of little interest. You looked like you had something to say. Is there something that you want to say to us?

Mr. Peter Wallace: There is nothing I want to say to you, other than the supremely obvious and what you already understand: There are issues around document retention, document training and packaging things up to the archives. The issues that I would be concerned about, in my advice to the Office of the Premier and in the conduct of my responsibilities as the head of the Ontario public service, would frankly not be concerned with that. Those would be important issues. Those would be dealt with at an administrative level.

The issues that I would be concerned about would be the integrity of document management overall. Even in areas where I had no formal responsibility—for example, the role of the Office of the Premier in response to committee requirements and other things—you would expect me to offer advice that was essentially public interest advice. I offered public interest advice in that context, the focal point being that the issue here would be the existence or not—not of emails with the Ontario public service but emails between political staff and emails between political staff and outsiders.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much, Chair. Thank you very much, Mr. Wallace, for joining us today. Mr. Delaney seemed to spend a lot of time on transitory records. Would it be fair to say that when David Livingston approached you about clearing accounts and

wiping drives, he wasn't talking about transitory information?

Mr. Peter Wallace: I would have no knowledge about what he was talking about. He provided me with an explanation about what he was talking about. I cannot see beyond that explanation, other than to give him the advice that if he were to take measures that would override existing material, I would foresee the potential to find myself and himself in front of this type of inquiry, and it would make an innocent explanation a lot less obvious.

Mr. John Yakabuski: I don't think he came to the highest-ranking public servant to ask about transitory emails, but again, that would be speculation on your part.

Mr. Peter Wallace: A perfectly reasonable speculation; not one I would have knowledge of.

Mr. John Yakabuski: What is not speculation—and you called it speculation. You've got to remember that this House was prorogued in October. Dalton McGuinty knew he was on the hot seat with regard to gas plant cancellations. This was a white-hot issue leaving the Legislature.

We're now into the time when Mr. McGuinty will be vacating the office. David Livingston comes to see you about how he was going to clear the slate of these emails and these records. When my colleague Mr. Fedeli basically told you what he was up to and why, he asked you if you believed him, and you said that would be speculative. That's not speculative. That's a question of, "Did you or did you not?" If I ask you, "Do you believe that I believe Mr. Leone?", I'm asking you about my state of mind. I'm asking about your state of mind. Did you believe Mr. Livingston with his explanation?

Mr. Peter Wallace: Let me try and be helpful here.

Mr. John Yakabuski: I'd like you to just answer, yes or no. Did you believe him or did you not believe him?

Mr. Peter Wallace: Remember, Mr. Yakabuski, the important information I gave you earlier, which is that Mr. Livingston had approached me earlier about the mechanics of deleting email records. He had approached me and sought information, through an innocent explanation about how to ensure that email records were deleted from the trash and how long any back up tapes would be done. On the basis of that, I might have reasonably concluded that it would be unlikely that there would be significant volumes of information. I would have already known that the Premier's office had indicated that they had no responses to the FOI request put in by Mr. Tabuns, so I would have formed a reasonable belief that records related to items of public interest may already not exist, and in that context I would not, frankly, be forming a view as to whether or not he was interested in records retention in that context. I would be forming a view about belt and suspenders in that context.

Mr. John Yakabuski: Well, I would contend that any time someone makes a request, everybody—it's human nature to make a decision: "Do I believe them or not? Do I believe them or not?" Ann Cavoukian raised a serious question. She says, "I didn't believe that it could be this benign and this innocent." Mr. Livingston says, "I was simply keeping my inbox clean."

Now, that's not what Mr. Livingston came to see you about, is it?

Mr. Peter Wallace: I'm sorry. That's a different question.

Mr. John Yakabuski: I know. That is a different—

Mr. Peter Wallace: That's a different question.

Mr. John Yakabuski: He never asked you about keeping an inbox clean, did he?

Mr. Peter Wallace: He didn't ask me about—

Mr. John Yakabuski: He came to see you about wiping the slate clean, making sure that there was nothing left on these computers if they were ever transferred to someone else.

Mr. Peter Wallace: And I provided him with advice around how that would look and how that would give reference to—that this would be consistent with the behaviour of an organization that wipes all its records, and that is not a normal organization in this context. So I believe that the intent of my advice, the caution in my advice, would be absolutely clear—

Mr. John Yakabuski: Okay. I only have two minutes, so I've got a couple of more questions. You're not really answering me whether you believed him or not. But who did delete the accounts? Who else deleted their accounts besides Livingston?

Mr. Peter Wallace: Individuals can't delete their accounts.

Mr. John Yakabuski: So what other accounts were deleted?

Mr. Peter Wallace: David Livingston's account is not deleted; it's disabled.

Mr. John Yakabuski: Disabled.

Mr. Peter Wallace: Whether or not it has any records in it is another question, but the account itself, the mechanical account, is disabled, not deleted.

Mr. John Yakabuski: When we asked for all accounts, all records, did we have to come up with the word "disabled" in order to get those records?

Mr. Peter Wallace: Absolutely not. Absolutely not. We provided—

Mr. John Yakabuski: So why didn't we get those records?

Mr. Peter Wallace: Well, that's a good question. That's a question, and I'm just going to, if you don't mind, provide an explanation for that.

Mr. John Yakabuski: Did Chris Morley, Sean Mullin and Jamison Steeve also have their accounts "disabled," as you say?

Mr. Peter Wallace: Those accounts were deleted.

Mr. John Yakabuski: Deleted?

Mr. Peter Wallace: At the instruction of the Office of the Premier in August or thereabouts of 2012. The accounts of those—

Mr. John Yakabuski: So by David Livingston? Who gave the order?

Mr. Peter Wallace: In those particular instances, in at least two of those instances—I'm not sure about all of them—the orders were provided by Mr. Livingston's administrative assistant.

Mr. John Yakabuski: And who was that?

Mr. Peter Wallace: Emily Marangoni—I don't know how to pronounce her last name. My apologies. I'm not good at that.

Mr. John Yakabuski: Okay. So an order from the Premier's office to delete their entire accounts, whether they'd been vetted for stuff that had to be protected by archive law or not?

Mr. Peter Wallace: Oh, no. After they had assured us that they had been—we do not undertake the deletion of the accounts as public servants until after they have told us that they have fulfilled their obligations.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

Mr. Tabuns, the floor is yours for 10 minutes.

Mr. Peter Tabuns: I'd like Mr. Wallace to finish his response.

Mr. Peter Wallace: The—and I'm struggling to remember. Go ahead with another question.

Mr. Peter Tabuns: Well, you had just told us that David Livingston's executive assistant had given direction to the public service to delete these email accounts after assuring you that all of the record retention policies had been respected.

Mr. Peter Wallace: You know, just to be really clear, this is just ordinary practice. Accounts are deleted. Before they're deleted, we ask and receive assurance that the ordinary processes have been complied with. That's exactly what you would expect the public service to do. That's exactly what we do in that context.

The difference in this context is not a difference—and the public service is not responsible for policing the Office of the Premier. We have no oversight over the Office of the Premier. We give them an opportunity to understand their obligations, and we sometimes go a little bit beyond the call of duty to give them an opportunity to understand what, you know, something might look like or some other aspect. But we actually have no positive or any other obligation to provide them with that information. These are theirs, and we can reasonably expect—and this is critically important. We can reasonably expect that they will understand the core aspects of the rules, and in this context, these issues are not tangential. The issues associated with these documents were not issues that, frankly, required my advice. They were issues that were absolutely central to the political discourse of the summer of 2012 and the political discourse that's continued to this day and dominates this committee and has dominated a good deal of this legislative session.

1800

Mr. Peter Tabuns: Okay. Going on to my questions, then, when the NDP freedom-of-information request on production of documents related to Project Vapour and Project Vapour-lock turned up zero documents, did the freedom-of-information coordinator come to you and say, "We have nothing that's responsive. This looks very odd"?

Mr. Peter Wallace: The freedom-of-information coordinator would not have done that. Again, they do not

have a supervisory role over the Office of the Premier. They accept what comes from the Office of the Premier.

Mr. Peter Tabuns: And is it common for there to be totally non-responsive requests?

Mr. Peter Wallace: It is actually fairly common for there to be non-responsive requests. A slightly more precise question might get a different answer, but it is common for there to be requests—

Mr. Peter Tabuns: And what would be a more precise question?

Mr. Peter Wallace: The observation from the IPC that it would be challenging to believe that there were no records responsive to that request—an observation that she made, that that strikes me as reasonable.

Mr. Peter Tabuns: Okay. In the Premier's Office Records Schedule, it indicates that "when a Premier resigns, arrangements should be made with the cabinet secretary's office for taking physical control and custody of the records. Careful measures should be taken to ensure the security of records, transfer of these records to the cabinet secretary."

Did that in fact happen?

Mr. Peter Wallace: That will refer to Cabinet Office records, to the records of decision-making of the government associated with, as I understand it, the continuity of government—so this is as if the governments were changing from one party to another. Obviously, in that context there's a tradition of Cabinet Office maintaining physical control over those records, ensuring their integrity. So that's what that refers to.

In fact, we did do that associated with cabinet decisions and cabinet records. The incidental daily information, valuable and otherwise, that accumulates in the information troves associated with the Office of the Premier is beyond that process. That's something quite different in that context.

Mr. Peter Tabuns: So it was outside of that—

Mr. Peter Wallace: That would be my understanding, that that would be—my understanding would be, and I explained this at some length at the beginning, that we would not expect Cabinet Office to have any supervisory functions or control functions over the practices of the Office of the Premier.

Mr. Peter Tabuns: Do you have any sense of what is on those hard drives, network drives etc. that your office took possession of?

Mr. Peter Wallace: Absolutely not.

Mr. Peter Tabuns: Okay. I think the Information and Privacy Commissioner asked you this, and I just want to ask one more time for the record: In general, do political staff understand the requirement to retain records in connection with the law?

Mr. Peter Wallace: I don't know if political staff, or indeed many public service staff, understand the parameters and details associated with the archives act or other aspects. That is a little bit arcane and not the subject of which—I will have some knowledge of that because I've been here for 30 years. I'm the cabinet secretary, which is to a huge extent about document management and other aspects.

But in terms of the primary issues about complying with freedom-of-information requests, understanding that the retention of records that are of intense interest and intense public discussion, and understanding that inferences will be drawn—strong and powerful, politically important inferences will be drawn from either the presence or absence of that information—I think is, frankly, self-evident. I would expect all of the bright people who work in the Office of the Premier or political offices in any government to have a pretty good understanding of that and not to require training about those areas.

In a quasi-facetious example, we provide them with credit cards. We provide them with detailed instructions on how to use the credit cards and other things, but we do, at root, have an understanding that they know the difference between the types of ways you use a government credit card and the types of ways you don't, without a great deal of explanation. I think most of this stuff is pretty well understood.

Mr. Peter Tabuns: Okay. Are you aware of any other email accounts that were deleted in the Premier's office other than the accounts of those who left employment?

Mr. Peter Wallace: I don't believe so, but again, this is not something that I would have undertaken exhaustive analysis or study of. It would not be my understanding of that at all.

Mr. Peter Tabuns: That matter hasn't been brought to your attention, then, at this point?

Mr. Peter Wallace: Yes, and it's not clear to me how that would happen, but that's—I just don't know that. It has certainly not been brought to my attention that there has been deletion of accounts of staff who have remained. There's always the possibility of duplicate accounts or anything like that, but I don't want to waste your time speculating on that.

Mr. Peter Tabuns: Okay. It's unfortunate, when you were here last time, that we didn't pursue a broader range of questions. I have to say to you, and I think some of my colleagues feel the same way: We are learning as we go along the scale and scope of what we're dealing with.

You noted in your discussion with the Information and Privacy Commissioner some behaviour that we, when we read the report, found highly irregular. Certainly, actions on the part of your staff to take physical control of hard drives, network drives, are highly unusual. Were there other irregular or even illegal activities that occurred around the gas plant issue that we haven't asked you about and we should have asked you about?

Mr. Peter Wallace: Going back to my first conversations with this committee, I provided some insights into the outreach by staff from the Premier's office into a proponent and the subsequent actions by my predecessor in screening that and maintaining the public interest associated with potential litigation.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Wallace: I do not believe that there are other material aspects associated with this, but allow me to be clear in this case as well, Mr. Tabuns, and through

you to the rest of the committee, which is that I am also learning, as we go along through this process. What may have seemed less important at a point in time has the potential to seem more important retrospectively. I and the rest of Ontario's public servants continue to serve in good faith, and find ourselves in an interesting and difficult set of circumstances that are circumstances that are largely functioning as a result of our political culture. We have unique and, I'll say it, bureaucratic responsibilities—responsibilities that are associated with the provision of policy advice. You will be receiving and you have already received a tremendous volume of documents. As you will review those documents, what you will discover is the integrity of the Ontario public service. You will see that it's providing direct—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the government side, Mr. Delaney.

Mr. Peter Wallace:—clear advice. That's really my understanding of what we did.

The Chair (Mr. Shafiq Qaadri): The floor is yours, Mr. Delaney.

Mr. Bob Delaney: I will let Mr. Wallace just finish his comment.

Mr. Peter Wallace: That's it. I'm unaware of other aspects.

Mr. Bob Delaney: Thank you. Today there has been a lot of discussion regarding those very recently requested documents from the Premier's office. Just to refresh everybody's memory, when this began a little over a year ago, the request was for correspondence between one date and another date pertaining to the issue from the Minister of Energy, the Ministry of Energy and the OPA. Only recently did the committee request documents from the Premier's office. We've been talking today about those recently requested documents from the Premier's office—some 30,000 records—which included those of staff who no longer work in the government. Correct?

Mr. Peter Wallace: I don't know. I have not reviewed the disclosure of the Premier's office in that context.

Mr. Bob Delaney: All right. You mentioned earlier that the accounts—

Mr. Peter Wallace: I have reviewed—let me rephrase that. That is correct. I have reviewed the binder produced by David Phillips. He no longer works for the government, so that is correct.

Mr. Bob Delaney: Okay. There were accounts of several dozen previous staff that, as you pointed out, were disabled but not deleted.

Mr. Peter Wallace: That's my understanding, yes.

Mr. Bob Delaney: In other words, the information is present in a state as of the moment the account was disabled. That, in essence, freezes that account as of that moment. Correct?

1810

Mr. Peter Wallace: That is how I'm informed, correct.

Mr. Bob Delaney: Okay. Those documents, I understand, were in fact searched for the responsive terms, and

within the 30,000 documents there are—and correct me on this—some thousands from former staff pursuant to precisely that search. Correct?

Mr. Peter Wallace: I can't speak to what was responded to in that search. I can speak, and already have, to the process, which is when this committee order came down, public service staff provided the Office of the Premier with access to the disabled accounts in order to allow them to fulfill the terms of the search, to meet the legal obligation imposed on them by the order of this committee. I presume that they did so and that if any documents were found, they were appropriately produced.

Mr. Bob Delaney: Which means that there is a high probability that some of the information that has been discussed here, in fact, has previously been provided to the committee in those 30,000 documents responsive to the search from the Premier's office.

Mr. Peter Wallace: That is not something of which I have direct knowledge—but could be.

Mr. Bob Delaney: Just for perspective, you've worked in the OPS for 30 years and you've seen governments of all three political stripes. Could you tell me whether or not previous governments retained and archived all of their records?

Mr. Peter Wallace: I have not reviewed the archiving practices of previous governments, though it's simple enough to look. I have not had occasion to review those. I do know that previous governments have relied on Cabinet Office in the same way that the current government and the McGuinty government have relied on Cabinet Office, which is to retain control of the official cabinet records, the records of cabinet decision-making and all of those things subject to cabinet confidentiality.

Mr. Bob Delaney: Okay. I want to move to discussing commercially sensitive information, something that I think we talked about the last time you were here.

Since we began our hearings in early March, dozens of document production motions have been moved and tens of thousands of documents have been disclosed. As you are no doubt aware, one of these requests for documents was from the office of the treasury board. Given the time constraints associated with the motion, the ministry unfortunately did not separate out those documents that are unrelated to the gas plants and which should be kept confidential.

Can you explain why this information, completely unrelated to either the gas plant issue or the terms of reference of this committee, was provided to this committee and in unredacted form?

Mr. Peter Wallace: I'd be delighted to. The Ontario public service, receiving the broad search terms from this committee, responded by establishing the basic criteria, working with counsel, ensuring an appropriate search of the records—and then relying on counsel, using criteria to determine what's in and what's out. In a practical sense, they defaulted to inclusion rather than exclusion if there was any doubt, the result being that, many times, tremendously long documents that contained large

amounts of utterly unrelated material but had, for example, a passing reference to gas plants associated with it or were included in a treasury board agenda that had a reference to something of interest to the committee—provided disclosure associated with that.

So there's simply a tremendous volume of material that in other circumstances, it would either be illegal to provide because it had personal or other information, or would never have been provided because it had cabinet confidentiality, or the government would be potentially at legal risk because we provided it—commercial confidentiality associated with a third party.

The committee process, as is well known and as we understand legally and as we respect, overrides all of those aspects. The result has been an unprecedented disclosure of information that under no other circumstance would have been made available to the committee. Those are the rules by which the committee has chosen to operate. It is not something that is preceded by other contexts, and it has resulted in a very large volume of information becoming available. I'm confident that information will reflect the quality of public service advice, but I'm also certain that it will involve—that, at some point, thoughtful governments will consider the ramifications of a process in which a great deal of information is made public.

Mr. Bob Delaney: Now that we have these documents, the committee is deliberating as to how to deal with those that you described that were identified as commercially sensitive. The Deputy Minister of Finance has sent several letters to this committee asking us to treat commercially sensitive material as confidential. He went so far as to identify four issues unrelated to gas plants that were particularly sensitive, and he explicitly asked that material related to these issues not be made public.

If I can quote from Mr. Orsini's letter, he said, "Some of the information in these documents is commercially sensitive, while other information is both commercially sensitive and subject to solicitor-client privilege. The public disclosure of this information could potentially compromise the interests of their parties or the province."

As a past Deputy Minister of Finance, what are the potential implications to taxpayers if this committee releases commercially sensitive information, some of which is subject to ongoing current negotiations?

Mr. Peter Wallace: There are two broad ramifications, one of which is, the province would lose leverage as its negotiating position or the views within the government were known more broadly. The second issue is that the competitive position of an individual corporation or a contracted correspondent with the government might be compromised as information related to their financial situation was made available, through public dissemination, to competitors. Those would be the standard reasons to request respect for commercial confidentiality.

Mr. Bob Delaney: Okay. In your view, how can other parties use this information? Would it be fair to say that

they might try to either get a higher payment or a better agreement, to the direct detriment of Ontario taxpayers?

Mr. Peter Wallace: I think the availability of information—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Wallace: —obviously would potentially compromise any negotiation. It also might compromise the interest of the entity with which we are negotiating in terms of its own competitive dynamic. So there are two variables and values at play there in that context.

Mr. Bob Delaney: Just before I conclude, Mr. Wallace, would you undertake to get back to the committee on what have been the practices of governments over the past 20 years on records retention?

Mr. Peter Wallace: I can undertake to do that, to the best of my ability.

Mr. Bob Delaney: That's all I'm asking.

Mr. Peter Wallace: Yes.

Mr. Bob Delaney: I think we're done, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. And thanks to you, Mr. Wallace, for your appearance.

There's a great deal of committee business, so I'll open the floor for the motions.

Mr. Peter Tabuns: Could we have a 10-minute break, Mr. Chair, and then come back to motions which make—

The Chair (Mr. Shafiq Qaadri): A 10-minute recess, in effect now.

Mr. John Yakabuski: Just a minute, Chair. Can I ask Mr. Wallace to provide—

The Chair (Mr. Shafiq Qaadri): You can do that informally, Mr. Yakabuski.

Mr. John Yakabuski: Oh, okay.

The Chair (Mr. Shafiq Qaadri): The committee is in recess.

The committee recessed from 1818 to 1829.

The Chair (Mr. Shafiq Qaadri): Colleagues, committee is back in session. I give the floor to our Clerk, who is going to be talking about OPA document disposition. Go ahead.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you. At our last meeting, we were discussing those OPA documents, and I just need further clarification. Did you want me to ask for them to separate out the confidential versus the non-confidential? Because they did offer that. And then, if they do do that, did you want me just to give you them all, the confidential and non-confidential? What would you like me to do with them? I need some direction on that.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Mr. Victor Fedeli: I seem to remember that we dealt with it by saying have them separated, turn both over, and we'll make a later determination on the confidential, if there's something that we found where we didn't feel they were confidential. I think that's what we had thought the last time.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: I think, Mr. Fedeli, you're referring to the extra boxes of documents from the Ministry of Finance.

Mr. Victor Fedeli: Yes, we did both. I thought we did both—handled both the same way.

The Clerk of the Committee (Ms. Tamara Poman-ski): It was left at the last meeting a bit—it wasn't really that clear—and then we moved on to something else. So from my standpoint, I wasn't clear on what the direction was regarding the OPA documents. I've already sent back those 13 boxes from finance to separate, because we agreed, but I need to know what to do with these OPA—

The Chair (Mr. Shafiq Qaadri): So: generalize, re-submit, sort, present to us, and a determination later.

Mr. Bob Delaney: With the addition, Chair, of that review being in camera. If there is indeed material that's commercially sensitive, subject to solicitor-client privilege, confidential, it would be helpful to review that material in camera, where, if needed, we can ask clarification questions of the party involved.

The Chair (Mr. Shafiq Qaadri): Agreeable?

Mr. John Yakabuski: No, we'll decide that—

Mr. Victor Fedeli: There's thousands of them.

Mr. John Yakabuski: That's right. Release it back to the committee in its entirety sorted.

Mr. Victor Fedeli: And we'll handle it the way we have handled other confidential documents. We can make public the ones that are public, and we'll reserve amongst the committee the files that are confidential until we have a chance to view them and decide—

Mr. John Yakabuski: Review them ourselves.

Mr. Victor Fedeli: —and decide ourselves whether to come back and ask that they be released. Is that not how we've dealt with them in the past?

Mr. Bob Delaney: I have no objection to that as long as the documents that we're talking about are documents that are in some way responsive to the committee's terms of reference, and I think that's fair game. I am, however, concerned that as the search terms get increasingly broad, as we've seen today, we end up capturing, by accident, documents that are not responsive to the committee's mandate, and we end up as a committee being handed documents that are commercially sensitive, subject to solicitor-client privilege, that contain proprietary information—for all we know, trade secrets or whatever else. If it doesn't relate to the committee's business, I think that the party that supplies us the documents should have an opportunity to say, "All right. Maybe there was a reference to the work of the committee in a footnote in such and such a document. You're welcome to look at the document. Once you've satisfied yourself that the document doesn't respond to the committee's mandate, then you can agree with us that it doesn't form part of the record." That's the part that I think as a committee we should consider doing.

Mr. John Yakabuski: Well, the committee will make that determination.

Mr. Bob Delaney: That's what I'm asking. What I'm asking—

Mr. John Yakabuski: We don't make it in advance. We make it after we have the documents—

Mr. Bob Delaney: That's what I'm asking. But I'm asking that that review of the documents be conducted in camera, where if, after review of a document, it's very clear that it doesn't in any way relate to the terms of reference of this committee, that whoever's provided the document can say here, in passing—for example, if we're looking at a document that would contain, in a footnote, some reference to news coverage of this issue, but the document itself is about something completely unrelated, then the document shouldn't form part of the committee's record; it has no business in here. And if we wish to look at it and say, "Yep, that is not ours," then we can say, "Okay, you can keep that. We're not interested in that."

Mr. John Yakabuski: Chair, we understand what Mr. Delaney is saying, and I think what we said earlier—we would like the entire tranche of documents re-released back to us sorted. The committee will make its determination at that point.

Mr. Victor Fedeli: Sorted by what they deem confidential and non-confidential.

Mr. John Yakabuski: Yes, that's right.

Mr. Victor Fedeli: Once we receive the non-confidential documents, those are ours for our continued use and full use, and the confidential documents—I can't imagine sitting here with somebody from the OPA going through it page by page. There could be tens of thousands of documents, as they've alluded to. There's already 110,000. We'll make our determination and come back to the committee and say, "These confidential documents need to be opened."

The Chair (Mr. Shafiq Qaadri): So just to wrap it up, again, for direction to the Clerk, that the materials that will be provided to you labelled "Confidential" will stay confidential until determined otherwise. Agreeable? Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, I'm not going to accept any confidential documents. So if you were going to separate documents into confidential and non-confidential, I do not want the confidential documents—if you were going to proceed with the sorting approach.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, as I understand it, the committee already agreed to the sorting—

Interjection.

Mr. Peter Tabuns: There's three different lots of documents, Mr. Chair. I know it's late on the last day of the session, and it's been a long session and everyone is trying to sort this through. So what's at issue are the OPA documents.

The Clerk of the Committee (Ms. Tamara Poman-ski): The ones that we're talking about—

Mr. Peter Tabuns: —don't have direction.

The Clerk of the Committee (Ms. Tamara Poman-ski): Right. It's the OPA ones.

Mr. Peter Tabuns: And my understanding is, they wanted all their documents to be confidential.

The Clerk of the Committee (Ms. Tamara Poman-ski): Right, but then they sent us a letter and they offered us people to separate them out, if we so choose.

The Chair (Mr. Shafiq Qaadri): So am I—yes?

Mr. Bob Delaney: I understand Mr. Tabuns's position, and he and I have talked about this on a number of occasions. But in this case, Mr. Fedeli, Mr. Leone, Mr. Yakabuski—

Interjection.

Mr. Bob Delaney: Can I—I'm trying to see whether or not we would have—

The Chair (Mr. Shafiq Qaadri): Make your point, Mr. Delaney, please.

Mr. Bob Delaney: —some agreement that says that those documents supplied to us in confidence will remain in confidence. I understand Mr. Tabuns doesn't want to accept documents supplied as confidential.

The Chair (Mr. Shafiq Qaadri): One would assume that's the reason why you want them sorted.

Mr. Bob Delaney: Right.

Mr. Peter Tabuns: Separated out. Physically separate.

The Chair (Mr. Shafiq Qaadri): Yes. Otherwise known as "sorted."

Mr. Bob Delaney: But what I'm asking is this: Mr. Fedeli, in accepting all of the documents, with those deemed by the OPA as confidential being separated out, will we agree that until we decide otherwise—if we decide otherwise—those documents marked "Confidential" will remain confidential?

Mr. Victor Fedeli: Well, of course. That's the whole idea of accepting them as confidential, just as we have in the past weeks and months.

The Chair (Mr. Shafiq Qaadri): Understood, but Mr. Tabuns is saying that he declines the receipt of materials labelled "Confidential."

Mr. Peter Tabuns: That's correct. I will not accept them.

Mr. Victor Fedeli: But we have been accepting confidential documents up to this point.

Mr. Bob Delaney: If I agree with Mr. Fedeli, does that provide the direction the Clerk is seeking?

The Chair (Mr. Shafiq Qaadri): All right. Is our Clerk happy?

The Clerk of the Committee (Ms. Tamara Poman-ski): So what I'm gathering would be that I'd go back to the OPA and ask them to separate and sort them, confidential versus non-confidential. I would give the PC caucus and the Liberal caucus the confidential and non-confidential, and you'll keep the confidential confidential. And for Mr. Tabuns, I'll just give him the public ones.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, that's agreeable to you?

Mr. Peter Tabuns: I apologize. If you could restate.

The Clerk of the Committee (Ms. Tamara Poman-ski): I will be requesting from the OPA to separate the documents, confidential versus non-confidential. I will receive them back, and I will give them to the Liberal caucus as well as the PC caucus, on USB sticks, I'm

assuming, labelled “Confidential” and “Non-confidential.” They’re going to keep the ones labelled “Confidential” confidential. And I will give you the public ones.

Mr. Peter Tabuns: Correct.

The Clerk of the Committee (Ms. Tamara Poman-ski): Okay.

The Chair (Mr. Shafiq Qaadri): Fine. Thank you.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you.

The Chair (Mr. Shafiq Qaadri): The floor is now open for motions. Mr. Fedeli.

Mr. Victor Fedeli: Chair, I would like to withdraw my motion from Thursday, please.

The Chair (Mr. Shafiq Qaadri): For which we thank you. Yes, thank you, Mr. Fedeli.

The floor is open.

Mr. Victor Fedeli: There are four motions that I have provided.

The Chair (Mr. Shafiq Qaadri): Please go ahead and read them into the record.

Mr. Victor Fedeli: I move that the Standing Committee on Justice Policy request from the Premier’s office, Ministry of Energy, Ministry of Finance, government House leader’s office, Cabinet Office, Archives of Ontario and secretary of cabinet the production of all documents and correspondence contained, stored or transferred onto electronic portable devices related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received, by the following individuals: Mr. David Livingston, Mr. Craig MacLennan, Mr. Sean Mullin, Mr. Jamison Steeve, Mr. Chris Morley, Mr. John O’Leary, Ms. Rebecca MacKenzie, Ms. Lauren Ramey, Ms. Laura Miller, Ms. Alicia Johnston, Ms. Wendy McCann, Mr. David Phillips, Mr. David Gene, Mr. John Brodhead, Mr. Christopher Bentley, Minister Brad Duguid, Mr. Dalton McGuinty;

That search terms for responsive correspondence include any and all proxy names and/or code words used to refer to the cancellations and relocations;

That responsive correspondence found on the aforementioned electronic portable devices be provided to the committee immediately upon identification and on an ongoing basis with a deadline for completion of no later than June 27, 2013;

That responsive documents be provided in an electronic, searchable PDF.

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Any comments on this before we take a vote on the motion? Yes, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Fedeli, just for clarity, you are asking that portable electronic memory devices, like portable hard drives or USB sticks, that exist in the possession of these bodies be made available to us. You have reason to believe that these portable electronic devices exist with this information, is that correct?

Mr. Victor Fedeli: We believe, partly based on what Mr. Wallace said today, partly based on what the privacy commissioner stated—

Mr. Peter Tabuns: Yes, I saw that.

Mr. Victor Fedeli: —on page 24, her comment that records may have been transferred from desktop computers of staff to portable electronic devices, and then the computers wiped clean. It’s those data that we’re looking for.

Mr. Peter Tabuns: Okay.

The Chair (Mr. Shafiq Qaadri): Fair enough. Mr. Delaney.

Mr. Bob Delaney: I have no trouble with Mr. Fedeli’s motion other than his last and, in my view, unnecessary comment. I would quote from today’s news coverage, where it said that Information and Privacy Commissioner Ann Cavoukian stopped short of saying the emails were downloaded on portable drives and spirited out of government offices.

Mr. Fedeli is making the assumption that information exists, and what I think the government is supporting is going to be a due diligence search to yield all of the information that does exist. But I think in Mr. Fedeli’s comments, he may have gotten a little ahead of himself.

The Chair (Mr. Shafiq Qaadri): Mr. Leone.

Mr. Rob Leone: Just two points: With respect of reference to what Mr. Delaney has just said, the Information and Privacy Commissioner did state that it was part of government protocol to, when they wiped clean computers—

Interruption.

The Chair (Mr. Shafiq Qaadri): We wish the press a good night.

Mr. Rob Leone: God bless.

Mr. Victor Fedeli: See you every Tuesday.

The Chair (Mr. Shafiq Qaadri): Sorry.

Mr. Rob Leone: Where was I? The part about government’s protocol—when computers were to be wiped, that the information from those drives be put on portable electronic devices.

There are two scenarios here. Obviously, they might not exist. That’s possible, but that would mean that the government wasn’t following its own protocol. If the government has followed its own protocol, we believe that these electronic portable devices would exist.

I would also make note of, and I’d hope that the intent of the search would also include, the BlackBerrys that Mr. Wallace has stated—these are portable electronic devices as well. They do contain information. They are, frankly, expandable drives where more information can be loaded and uploaded. I hope, in the spirit of the motion, that we can include BlackBerrys.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

We’ll move to the motion. Those in favour of the motion? Those opposed? Motion 1 carries.

Mr. Fedeli.

Mr. Victor Fedeli: My second motion: I move that the Standing Committee on Justice Policy request all email correspondence related to the Oakville and Mississauga gas plant cancellations and relocations sent or

received by Mr. John Fraser, executive assistant to Mr. Dalton McGuinty;

That the emails be provided to the committee by June 27, 2013, and that the emails be provided in a searchable, electronic PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments before the vote? Mr. Delaney.

Mr. Bob Delaney: Chair, is this motion in order?

The Chair (Mr. Shafiq Qaadri): This motion is in order.

Mr. Bob Delaney: Why is this motion in order?

Mr. Victor Fedeli: Because it's in order.

Mr. John Yakabuski: Why would it be out of order, would be the question. What do you see wrong with it, Mr. Delaney?

Interjections.

The Chair (Mr. Shafiq Qaadri): Well, Mr. Delaney, to state what's written there, it's within the mandate of the committee, in terms of seeking the correspondence related to these matters.

Mr. Bob Delaney: Chair, just before we vote on this, which is what I consider to be a fishing expedition, and that involves a different ministry not now subject to this committee, I'm going to quote, actually, from the document distributed earlier by—I think it's from Mr. Fedeli. I'm not sure.

Mr. Victor Fedeli: Chair, I did not distribute any documents.

Mr. Bob Delaney: This one isn't yours? I stand corrected.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. John Yakabuski: Chair, the motion is in order.

The Chair (Mr. Shafiq Qaadri): And comments are being made on the—

Mr. Bob Delaney: The point that I can make, and indeed I can make until midnight, if I so choose—

Mr. Taras Natyshak: Let's do it.

Mr. Victor Fedeli: My flight's at 11:33 tonight.

The Chair (Mr. Shafiq Qaadri): Mine is earlier.

Mr. Bob Delaney: What would you like to have for dinner?

Mr. Victor Fedeli: I'm here till 11:33.

Mr. John Yakabuski: I'm not.

Mr. Peter Tabuns: Take a deep breath, Bob.

Mr. Bob Delaney: While the motion may be in order, Chair, records of constituency staff and matters back and forth to constituency offices are not normally subject to this. So what is the purpose of this request?

Mr. Victor Fedeli: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Mr. Victor Fedeli: If there are no Oakville and Mississauga gas plant cancellation records, then there's no foul.

Mr. Bob Delaney: Mr. McGuinty's constituency office manager's name has not heretofore come up in the course of this committee's discussion. I ask again: What is the purpose of this request?

Mr. Victor Fedeli: We're looking for all of the records from the Premier's discussions on gas plant cancellations, Chair, and I'd like to call for the vote.

Mr. Bob Delaney: Well, you can call for the vote, but if you want, I can sit here and do this ad infinitum. When you call for this, what email accounts are you requesting be searched?

Mr. Victor Fedeli: I think the motion is quite clear.

Mr. Bob Delaney: The motion is actually very vague. And it says—

Mr. John Yakabuski: All email correspondence.

Mr. Bob Delaney: It says "all email correspondence," but it doesn't talk about which account, and that's an important consideration.

Mr. John Yakabuski: If it includes John Fraser and it includes Oakville or Mississauga, then it's in the motion.

Mr. Bob Delaney: Am I assuming now that the PC caucus is saying that all constituency email accounts from anybody that mention anything about this are in?

Mr. John Yakabuski: He works for the Premier—he worked for the former Premier—

Mr. Bob Delaney: Or are you suggesting that Mr. Fraser—

Mr. John Yakabuski: He was the Premier's EA in the constituency office.

Mr. Bob Delaney: —has an account at Ontario.ca? I think this is an important consideration. I'd like to know what accounts you are asking be searched.

Mr. Victor Fedeli: All email correspondence. It's plain and simple here, Chair.

Mr. Bob Delaney: It's not, actually, plain and simple. It says "all email correspondence," but what it is not specific about is which account.

Mr. John Yakabuski: Any account—

Mr. Bob Delaney: I would like, actually, for you to answer the question and tell me which accounts you wish to have searched.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli and Mr. Delaney, if this particular motion is arousing so much kind of cross-exchange here, would you be willing to stand this motion down until next Tuesday?

Mr. Victor Fedeli: No. I'd be willing to vote on it.

Mr. John Yakabuski: We've never specified, at any time, in any of our motions, which accounts we are asking about, ever—ever—

Mr. Victor Fedeli: I think that leads to the broader conspiracy theory that—

Mr. John Yakabuski: —in any motion, it has always been about the emails and the correspondence from a particular person who dealt with Oakville or Mississauga. So there's nothing unusual about this, Mr. Delaney. This is just typical of your behaviour here at this committee.

Mr. Bob Delaney: Well, if there's nothing unusual about it, would you tell me the names of any other constituency staff who have had their account searched?

Mr. John Yakabuski: There have been none. Nobody else was the EA to the Premier.

Mr. Rob Leone: Dalton McGuinty did state he didn't do email, so someone had to do it for him.

Mr. John Yakabuski: Yes. And Dalton McGuinty, just last Friday, came out and talked about how he had nothing to do with any of this latest scandal, as brought to our—

Mr. Bob Delaney: All right. I'll tell you what. Do you want to see it? Why don't you have a look at it. Let's support that motion, okay?

1850

Mr. Victor Fedeli: There we go. I call for the vote, Chair.

The Chair (Mr. Shafiq Qaadri): All right. Those in favour of the second motion presented by Mr. Fedeli? Those opposed? The motion carries.

Mr. Fedeli, motion 3.

Mr. Victor Fedeli: Thank you, Chair.

I move that the secretary of cabinet take the following immediate action with respect to one of the individuals involved in the gas plant scandal, Mr. Craig MacLennan:

(1) That the secretary of cabinet, as the interim head of the OLGC, take immediate steps to secure from destruction or deletion any and all electronic files and backups of Mr. MacLennan's computer as well as any other communications devices used in his current employ; and,

(2) That the secretary of cabinet take immediate steps to direct his staff to produce for the committee any emails, attachments and/or responses, texts, BBMs or other forms of communication to and from; in and out; and/or sent and received from Craig MacLennan containing information of any kind related to the cancellation and relocation of the Mississauga and/or Oakville gas plant; and/or matters currently before the Standing Committee on Justice Policy and that such a search and production order be conducted effective the day Mr. MacLennan assumed his position at the OLGC to the present day, June 11, 2013;

That the items above be tabled with a Clerk of the Committee without redaction for public disclosure not later than 12 noon on June 25, 2013.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Comments before we vote? Mr. Delaney.

Mr. Bob Delaney: Again on whether or not this is in order, Chair: This committee does not have the authority to request documents from the Ontario Lottery and Gaming Corp.

Mr. John Yakabuski: Apparently it does.

Mr. Victor Fedeli: Well, we're about to find out.

The Chair (Mr. Shafiq Qaadri): Apparently, the test, Mr. Delaney, is the fact that the documents be related to the gas plant issue.

Mr. Bob Delaney: Okay, that's fine.

The Chair (Mr. Shafiq Qaadri): It does pass the test and therefore is in order.

Mr. Victor Fedeli: Thank you, Chair. Call the vote.

The Chair (Mr. Shafiq Qaadri): Any further comments before we proceed to the vote?

Those in favour of motion 3? Those opposed? Motion 3 carries.

Mr. Fedeli.

Mr. Victor Fedeli: I move that the secretary of cabinet be instructed by the Standing Committee on Justice Policy to conduct a government-wide search of any and all email accounts ending with "@ontario.ca" that have received and/or sent emails to "mmsmith442@gmail.com" related to the matters currently under the purview of the committee's investigation into document production order; gas plant relocation and matters related to the prima facie breach of privilege, and that all emails, attachments and responses to and from; in and out; and/or sent and received from the aforementioned email account from the period of time starting January 25, 2013, to the end of day on June 11, 2013, be produced and that those documents be tabled with a Clerk of the Committee without redaction for public distribution to the respective caucuses by 12 noon on June 25, 2013;

That the secretary of cabinet immediately take steps to secure from destruction or deletion any and all electronic files and backups to the aforementioned provisions of this motion.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Mr. Delaney?

Mr. Bob Delaney: What is the name of the person to whom this Gmail account belongs?

Mr. Victor Fedeli: "mmsmith442" belongs to Monique Smith.

Mr. Bob Delaney: Okay.

The Chair (Mr. Shafiq Qaadri): Are there any further comments or questions on this issue before we proceed to the vote?

Mr. Bob Delaney: No.

The Chair (Mr. Shafiq Qaadri): Seeing none—fine, we'll proceed to the vote.

Those in favour of motion 4? Those opposed? The motion carries.

Mr. Tabuns's deferred motion from previous—

Mr. Peter Tabuns: With your permission, Chair, if that could be deferred until next week's meeting.

The Chair (Mr. Shafiq Qaadri): I will be happy to defer.

Mr. Fedeli?

Mr. Victor Fedeli: I'm fine.

The Chair (Mr. Shafiq Qaadri): Fine. Any further business before this committee?

I would have liked to wish you a happy summer break, but we'll see you in a week.

Mr. Taras Natyshak: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Taras?

Mr. Taras Natyshak: You can still wish us a happy summer. We are entering into the summer season.

Le Président (M. Shafiq Qaadri): Je vous félicite, monsieur Taras.

M. Taras Natyshak: Je l'apprécie, monsieur. Merci.

The committee adjourned at 1855.

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**Standing Committee on
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Members' privileges



Assemblée législative de l'Ontario

Deuxième session, 40^e législature

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de la justice**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICY

Tuesday 18 June 2013

COMITÉ PERMANENT
DE LA JUSTICE

Mardi 18 juin 2013

The committee met at 0901 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Colleagues, ladies and gentlemen, at the outset I first of all commend you for doing the committee's business during the summer session when all of our other colleagues are likely elsewhere. In any case, I call the meeting of the Standing Committee on Justice Policy to order.

MR. CHRIS MORLEY

The Chair (Mr. Shafiq Qaadri): I invite our first presenter to please (a) be seated and (b) be sworn in by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Chris Morley: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Morley. I know you know the drill very well. You have five minutes to make your opening address, beginning now.

Mr. Chris Morley: Good morning, and thank you for the invitation to appear.

As you know, I served as Premier McGuinty's chief of staff from May 2010 to May 2011. Prior to that, I was the director of communications in the Office of the Premier.

On the matter of the decision to relocate the Mississauga and Oakville gas plants, let me say clearly that I was part of a broad consensus of people who believed those gas plants should be relocated. I supported the Premier's and the Minister of Energy's decision to move those plants out of a polluted airshed. In making that decision, elected officials listened to the people who elected them, which is a fundamental tenet of democracy and the reason this Parliament was established in the first place. I note that when I left government on June 1, 2012, the agreements to move those plants had not yet been reached.

With regard to my record-keeping practices, the facts are these: My practices were consistent with the Archives and Recordkeeping Act and the Premier's office records schedule.

When I departed the Office of the Premier, I left behind a box of documents to be stored at Queen's Park. Many of those files were active, even until very recently. Those documents can be divided into five general subject themes:

- (1) teacher negotiations;
- (2) the Samsung renewable energy agreement;
- (3) the 2012 budget, and negotiations with the NDP to pass that budget;
- (4) communications material related to the provincial budget, and in particular, changes made in 2010 to make Ontario's tax system more friendly to business investment; and
- (5) miscellaneous records, including some emails and letters.

On May 16, 2013, in anticipation of appearing before this committee the following week, I retrieved those documents, and yesterday, I met with the Archives of Ontario to hand over 300 pages of records. They are now in the hands of the independent, non-partisan Ontario public service.

I wish to address one further issue directly, and that relates to some of the inaccuracies that have emerged in the debate around Ontario's record-keeping rules. For obvious political reasons, some on this committee will have you believe you can never delete any email or any document. That's false and inaccurate, and I think they know that. But those inaccuracies must be confronted and confronted today in the strongest possible terms. The fact is, the rules require certain documents and emails be deleted or removed.

In preparation for today I have gone through—in painstaking detail—the Ontario public service's policy on records, and this is what I found: There are at least 99 different reasons why political and public service staff must delete a document. I note, for those in the media following along with binders, that list is found behind tab 2.

According to the Ontario Common Record Series for Transitory Records, the rules require staff to do the following: "Transitory records must be" deleted "using methods appropriate to their level of sensitivity."

Surplus duplicates: What do the rules say? "Destroy immediately when no longer actively used and referred to."

Records of short-term value: What do the rules say? "Destroy immediately when the material is no longer required."

Intermediate records: What do the rules say? "Destroy immediately upon successful replacement or incorporation into the subsequent or final record."

Draft documents and working materials: What do the rules say? "Destroy immediately when the final master record has been completed and filed."

I could go on and on and on, but time prohibits me from reading all 99 reasons why the rules require the destruction and deletion of records. I do hope we'll be able to explore this further during the Q and A.

I will say this to conclude: I worked here a long time. I followed the Archives and Recordkeeping Act, and because of that, the archives now have more than 300 pages of my records. But I didn't keep everything because the rules told me not to.

I'd be pleased to take your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Morley.

I offer the floor to the NDP side. Mr. Tabuns: 20 minutes.

Mr. Peter Tabuns: Thank you, Mr. Chair. Thank you, Mr. Morley.

Jamison Steeve testified that he met with you and Dalton McGuinty prior to meeting with TransCanada in June 2010. Did you or the Premier instruct Jamison Steeve to offer to make TransCanada whole?

Mr. Chris Morley: No, and I'll answer that question in three parts.

First, Mr. Steeve has been before this committee. Mr. Steeve has said clearly that it was TransCanada who used that language around their desire to be kept whole.

Second, Chris Breen, a representative of TransCanada, sat in this chair before this committee and said Mr. Steeve stopped short of using that language.

Third, following that October 2010 meeting with TransCanada, Mr. Steeve called me. Do you know what he said? He said, "TransCanada said they want us to keep them whole or close to whole," and we had a conversation about that, because we could not figure out why TransCanada was already negotiating against themselves by opening up the door to being kept only close to whole.

The fact of the matter is that that language was used by TransCanada, as has been testified before this committee.

Mr. Peter Tabuns: When you went forward to cancel construction of the power plant in Oakville, did you know what it would cost?

Mr. Chris Morley: The former Premier has been before this committee and answered that question, and he indicated very clearly, as has been reported widely, that we were going to enter into discussions with TransCanada about the need to relocate that plant and there would be, likely, some financial costs associated with that.

We also knew that there was going to be a cost to those communities if we went ahead. We knew that that was a polluted airshed. We had come to realize that we had got the decision wrong and that putting up a gas-fired power plant in the location where you could not put a

single wind turbine was simply false and simply wrong. Those are the facts.

Mr. Peter Tabuns: Why didn't you think about it before you sited the plant there in the first place?

Mr. Chris Morley: Well, with regard to the Oakville plant, the decision to site it there was actually made by the Ontario Power Authority, through a procurement process.

Mr. Peter Tabuns: Under a directive from the Minister of Energy.

Mr. Chris Morley: The Minister of Energy did not specify any specific location.

I agree with you, Mr. Tabuns, that that process is flawed. Picking up from some of the testimony from the Ontario Power Authority, one of the requirements that they had was, you had to have site control. Given the inability to be a good neighbour in that neighbourhood, TransCanada, I think, pointed out a problem with the OPA's process, that "site control"—perhaps the definition of that needs to be a little bit broader. I think you and I would agree on that.

Mr. Peter Tabuns: Was Don Guy involved in the decision around the cancellation of the Oakville plant?

Mr. Chris Morley: I don't recall talking to Don about this. I would have talked to Don periodically when I became chief of staff in 2010. Obviously, that would have become more frequent as the election campaign approached, as, to be frank, would be the case between your leaders' offices and your campaign teams. That's entirely appropriate, normal. He would have been advised of the decision. But ultimately, as the Premier has said, it was his decision, along with the Minister of Energy, which was later confirmed by the cabinet.

0910

Mr. Peter Tabuns: Did Don Guy give any advice on this decision?

Mr. Chris Morley: Don was always very respectful of the need for the government to make decisions. To be frank, he would live with the consequences regardless. And from a campaign perspective, I can remember on several occasions Don saying, "You folks do whatever you think is right." That's the way he operated as the head of the campaign. That's the way I operated as chief of staff to the Premier.

Mr. Peter Tabuns: Did TransCanada reach out directly to you about meeting in 2010?

Mr. Chris Morley: No. I will answer this question thoroughly. As you know, and as Mr. Breen and Mr. Steeve and Mr. Mullin have testified, the main points of contact between TransCanada and the Office of the Premier were through Mr. Steeve. He was the most senior official they regularly dealt with. I have no recollection of meeting with TransCanada prior to the decision being made to relocate the plant. In fact, I'm quite sure that didn't happen.

I had three conversations with TransCanada between 2010 and 2012. The first was in late fall, November or December, of 2010, as TransCanada was exploring the possibility of alternate locations. I attended a meeting

where we essentially discussed some possibilities of sites down in the Kitchener-Waterloo-Cambridge area.

My next conversation with TransCanada occurred by phone in August 2011. After some of my colleagues had been screened out of the file, I became more active in and around the time the government entered into an arbitration agreement. I had a phone call with TransCanada, somebody in Calgary—I don't recall who it was; it was on the communications side—where I essentially agreed that we—well, I proposed and drafted language, and you have those documents, around some holding language regarding the new development, that an arbitration agreement had been entered into.

My third and final discussion with TransCanada that I can recall was in May 2012 when I met with their president and CEO, Russ Girling. It was on a completely unrelated matter. In fact, he was updating me on some of the challenges that existed with flowing oil west to east, as opposed to east to west. He was essentially advising me of some of the issues that have now emerged into the public debate.

Mr. Peter Tabuns: That first phone call with TransCanada in the fall of 2010—

Mr. Chris Morley: It was a meeting, but yes.

Mr. Peter Tabuns: Who was it with?

Mr. Chris Morley: Chris Breen would have been there. Jamison Steeve would have been there. I suspect Sean Mullin would have been there. That meeting has been referred to in various forms in previous testimony.

Mr. Peter Tabuns: Do you have notes from that meeting?

Mr. Chris Morley: I do not.

Mr. Peter Tabuns: And could you give us an outline of what was discussed at that meeting, to your recollection?

Mr. Chris Morley: TransCanada brought in a couple of ideas. They were not proposals; they were simply ideas around potential sites in and around the Kitchener-Waterloo-Cambridge area. They had a map and—I mean, I think from a TransCanada perspective, what they were looking for, as we were talking about relocating the gas plant, was to ensure that there would be no daylight between the OPA and the government with regard to one side being okay with the site and another party not being okay with the site.

I think it was an entirely appropriate meeting. They were doing their due diligence, and it frankly was an appropriate conversation.

Mr. Peter Tabuns: Did you, in your discussions, indicate what sort of deal would be reachable or not reachable with TransCanada?

Mr. Chris Morley: No.

Mr. Peter Tabuns: Did Shelly Jamieson know that you were in contact with TransCanada?

Mr. Chris Morley: Yes.

Mr. Peter Tabuns: That's interesting, because she said to us that she became aware of staff involvement with TransCanada fairly late in the game—I think the

spring of 2011, as a matter of fact. But you were telling her in 2010 that you were meeting with TransCanada?

Mr. Chris Morley: That was not your question. Your question was, did she know, and at some point, she became aware.

Mr. Peter Tabuns: And at what point was that?

Mr. Chris Morley: I have no idea, but I can recall. I know for certain that she became aware—

Mr. Peter Tabuns: Oh, no; she became aware. That's when she screened people off.

Mr. Chris Morley: Correct, and I was not screened off.

Mr. Peter Tabuns: Yes. Why weren't you?

Mr. Chris Morley: That would have been in keeping with the advice of the Ontario public service.

Mr. Peter Tabuns: Did you ever, at any point, go to her and say, "I'm critical to this. I'm at the centre of this. You can't screen me off this"?

Mr. Chris Morley: No. My level of involvement prior to my colleagues being screened off was actually very limited. I obviously was part of the consensus around the decision to be made, as were, to be frank, elected officials from your parties.

Mr. Peter Tabuns: Pardon?

Mr. Chris Morley: Elected officials from all three parties were part of a consensus that said, "The Oakville gas plant does not belong there."

Mr. Peter Tabuns: Well—

Mr. Chris Morley: No, no—

Mr. Peter Tabuns: No, go ahead, because I'm looking forward to your comments.

Mr. Chris Morley: My involvement: I was certainly aware; I was certainly involved. I was not managing any file in any major way. As has been indicated, Mr. Steeve was the major contact and point person on the file. He had the conversations with the Premier.

I will say this: I tended to spend most of my time on files where the governing party and opposition parties disagreed, not on files where they agreed.

Mr. Peter Tabuns: I just want to point out that it was your party that sited this plant, but I personally warned your government that it was a mistake to site the plant there prior to your signing a contract. I won't speak for the opposition; they can speak for themselves. But a lot of people—

Mr. Chris Morley: I'd like to respond to that—

Mr. Peter Tabuns: No, no. Just one minute—

Mr. Chris Morley: I give you a ton of credit there—

Mr. Peter Tabuns: Mr. Morley?

Mr. Chris Morley: I give you a ton of credit. You guys got there first. You were right.

Mr. Peter Tabuns: Mr. Morley, this Liberal attempt to try to say that everyone was responsible when it was you guys who created the mess and then had to clean it up to save your own political hides—it just doesn't wash.

Were you surprised that Shelly Jamieson screened people off that file?

Mr. Chris Morley: In what is a very stimulating and very fast-paced job, I learned not to be surprised or unsurprised by anything.

Mr. Peter Tabuns: Were you involved in the campaign decision to cancel the Mississauga gas plant?

Mr. Chris Morley: Yes.

Mr. Peter Tabuns: Why was the decision made?

Mr. Chris Morley: Again, the decision was made because it was an entirely unacceptable place for a gas plant. You couldn't put a single wind turbine there.

My view is, the rules changed in 2009, when, with regard to the siting of wind turbines, there came to be a 550-metre setback. The government, when it came to gas plants, did not keep up with the proper regulatory framework. So you had this ridiculous situation of siting a gas plant in the shadow of a school where you couldn't put a single wind turbine.

I had conversations with the Premier regarding the Liberal Party commitment to relocate that plant. I personally had that conversation with him. I had it twice, and he made the decision.

0920

Mr. Peter Tabuns: I'm going to turn things over to my colleague. I'll come back to you later.

The Chair (Mr. Shafiq Qadri): Mr. Bisson?

Mr. Gilles Bisson: Merci, monsieur. Earlier, in your opening statement, you talked about documents that you've turned over to the archives. What's in those documents?

Mr. Chris Morley: I tried to anticipate that question in some ways. It is 300 pages—let me take a step back and tell you how I managed my documents when I was there.

Mr. Gilles Bisson: No, right now I'm asking what's in those documents. I'll get to the management after.

Mr. Chris Morley: The way I managed my documents was, from time to time, as I came across documents that I thought needed to be retained, in keeping with the Archives and Recordkeeping Act and the Premier's Office Records Schedule, I would set them aside.

There are essentially five categories of documents: teacher negotiations; the Samsung renewable energy agreement; budget documents related to the 2012 budget—in fact, a notebook that you would have sat there and watched me scribble notes in quite extensively; budget documents—not budget documents, mostly communications material related to budgets, starting back, I think, in 2008; and the fifth would be a miscellaneous grouping of—there are some letters, there are some emails.

To answer your next question, there are no documents related to the issue that this committee is exploring.

Mr. Gilles Bisson: I want to get back to your notebook, because I did note that you were a copious taker of notes as we sat and negotiated the budget last year. You must have taken notes at the time of this whole gas plant debacle, through the entire process. You must have had a notebook and taken notes.

Mr. Chris Morley: In fact, the discussion that we would have had regarding the potential passage of the 2012 budget would have been an exception in terms of when I was actually in a room taking notes.

Mr. Gilles Bisson: The only time you ever took notes is when you came and negotiated with me. You had no notebooks and took no notes any time—

Mr. Chris Morley: Actually, if I can, the reason I took those notes was to ensure that there was a handwritten record, should the NDP, at some later date, start to introduce amendments to a budget which they had never raised during discussions.

Mr. Gilles Bisson: First of all, we told you—

Mr. Chris Morley: And that would never happen. That would never, ever happen. I know that that would never happen.

Mr. Gilles Bisson: If you read your notes, you'll note that we told you we were going to amend that budget. The surprise is, they supported us.

But I'm back to the point: Did you or did you not have handwritten notes taken, while you worked in the Premier's office, related to this debacle? Did you take any notes? Did you write in a notebook?

Mr. Chris Morley: No.

Mr. Gilles Bisson: So I'm led to believe that the only time you ever had a notebook was when you negotiated with us. That's interesting.

In regard to the privacy commissioner, she's pretty darn clear that you guys deleted notes, deleted emails that in fact you should never have deleted. So how do you square what you're saying this morning with what the privacy commissioner has said in regard to deletion of notes? First of all, you guys deleted a bunch of notes and you deleted a bunch of emails, and now you're saying you never took notes on the most critical things related to the gas plants and the only notes you ever took were when you sat down and talked to the NDP. How am I going to believe that? How is the public going to believe that?

Mr. Chris Morley: The premise of your question is wrong on a couple of fronts. I will choose to discuss the Information and Privacy Commissioner's report. I actually have had a fairly strong relationship with her. She never discussed this report with me.

Mr. Gilles Bisson: Did you ever ask her the question? Did you ever say—

Mr. Chris Morley: No, no, no, no. She never discussed her report with me. She never approached me to ask how I manage my records. She has no idea. She's learning about it for the first time this morning because she didn't raise that. So as far as I'm concerned, that report has nothing to do with me.

Mr. Gilles Bisson: Are there documents that you have not released to this committee, that were in your possession, that are related to the gas plant files—either written notes, deleted notes, documents, any type of information about the gas plant debacle?

Mr. Chris Morley: No. I think it's critically important that we talk about what the actual rules are, because the rules must—

Mr. Gilles Bisson: No, no, I asked—

Mr. Chris Morley: No, no, no. The rules must be discussed in some detail because there are people before this committee who have suggested that it is never appropriate or okay for any member of the Ontario public service or any political staffer to delete a note, and that is simply false. Let me read to you from the Ministry of Government Services Recordkeeping Fact Sheet—The Fine Art of Destruction: Weeding Out Transitory Records.

Mr. Gilles Bisson: Stop ragging the puck and killing the time. I have a couple of other questions I'd like to get to. The following question is—

Mr. Chris Morley: What does it say? It says, "Ensure that you regularly scan for transitory records and delete as you go." That's the direction to staff.

Mr. Gilles Bisson: Listen, the public don't believe you guys when it comes to deleting notes or anything. The record stands for itself. On to the next question—

Mr. Chris Morley: I find it very difficult that you folks are not interested in a discussion about what the actual rules are.

Mr. Gilles Bisson: Well, listen: I'm to believe that the only time you ever had a notepad is when you negotiated with me—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Gilles Bisson: —and then you never took a note the entire time that you sat in the Premier's office. None of that stuff has surfaced. I don't buy anything that you're saying. Sorry, Morley.

Mr. Chris Morley: In fairness, I've talked about five different categories of documents, in keeping with the Archives and Recordkeeping Act, that I've turned over to the Archives of Ontario. They include—there actually are some handwritten notes that I used on the Samsung file, that I used on teachers' negotiations—

Mr. Gilles Bisson: That you used on gas plants?

Mr. Chris Morley: No, sir.

Mr. Gilles Bisson: You had notes for teachers, you had notes for other things, but not on the gas plants. How are we to believe that? How is anybody listening to this testimony going to believe that you took notes on everything but the gas plants? Doesn't that leave a huge hole you can drive a Mack truck through, or call into question your credibility?

Mr. Chris Morley: What leaves a huge hole for me is the fact that there are 99 reasons that are perfectly acceptable. In fact, staff are directed to delete and destroy documents.

Le Président (M. Shafiq Qaadri): Merci, monsieur Bisson, pour vos questions. Au gouvernement : monsieur Delaney, 20 minutes.

Mr. Bob Delaney: Thank you very much, Chair. Good morning, Mr. Morley. I just want to thank you for being here.

A couple of things I want to start off asking you: Your appearance at the committee today—toward the end of

our committee meeting on June 6, my colleague Mr. Tabuns asked the Clerk about the possibility of getting a Speaker's warrant to get you to appear before the committee. My understanding is that you're not attending this morning on account of any Speaker's warrant. Would you clarify for the committee how your appearance this morning came about?

Mr. Chris Morley: I was approached about appearing before the committee, I think, for the week of May 6, and unfortunately I was in Edmonton for the bulk of that week for my sister-in-law's wedding. I responded to the Clerk by suggesting that we arrange a time for the week of May 20, so the committee could have some certainty about my appearance. I never heard back.

Mr. Bob Delaney: Fair enough.

Mr. Chris Morley: The committee eventually requested me—last Thursday, I think it was—and I'm here this morning.

Mr. Bob Delaney: Okay. You've just been questioned about the veracity of your testimony. Do you take your oath to tell the truth seriously?

Mr. Chris Morley: I take my oath seriously, and do you know what else I take seriously, Mr. Delaney? I take the rules seriously. I take the rules that require staff to, in many circumstances, delete and destroy documents. I don't think this committee, based on what I've seen in the last couple of weeks, to be frank, has given adequate attention to the rules.

Let me quote from them: Premier's Office Records Schedule—it's from 1999, still in effect today. "Duplicate copies belonging to other offices or branches within the government" must be deleted. For intermediate records, what do the rules say? Those records consist "of records that are used solely in the preparation of other records and are not needed once the preparation of other records is complete." Again, that is a document that must be deleted.

Mr. Bob Delaney: Okay. What are your thoughts on the recommendations by the Information and Privacy Commissioner and her report?

Mr. Chris Morley: As I said earlier, I have had a good relationship with the Information and Privacy Commissioner. I do have to take issue with one of her recommendations, which, to be frank, I find unworkable. One of her recommendations is, essentially, to make it an offence under the Freedom of Information and Protection of Privacy Act that the destruction of any records that "may reasonably be subject to" an access request—that that become an offence.

I know that people before this committee would not ever debate what is meant by what "reasonably may be subject to," but she's essentially saying that there will still only be a portion of information that's made available. She's essentially saying that there are 99 exemptions as to why you can delete a document right now; she's going to add a 100th. I disagree with that, and I think what she's actually saying is that you have to keep everything.

If that's going to be the law, then let this committee put forward a recommendation that says that's the law. It's actually a law that I'd support, that nothing could ever be deleted.

0930

Folks, I actually also think that that should extend to MPPs and caucuses. I know that's a level of transparency that I'm sure everyone could support, that if the rule is going to be to hold staff to account—that you can't ever delete anything—then let that be the law. Let it be clear. And let those documents be disclosed within 60 days in real time. Let's open up the windows and let the light shine in.

Mr. Bob Delaney: Okay, thank you. Having worked in government a number of years, do you think staff need any more training when it comes to record retention so that they're aware of what the rules are and what their responsibilities are?

Mr. Chris Morley: The former Premier has indicated that some additional staff training is warranted. That's something that I'd agree to. That's something I'd agree with. In fact, I have to say there's probably only a handful of people in the province who have as detailed an understanding of the Archives and Recordkeeping Act and the Premier's Office Records Schedule and the rules regarding transitory records as I do. There are 99—

Mr. Gilles Bisson: Let's adjourn the committee.

Mr. Chris Morley: There are 99 different reasons—

The Chair (Mr. Shafiq Qaadri): Is that a motion, Mr. Bisson?

Mr. Gilles Bisson: No.

Mr. Chris Morley: Do I get a say?

There are 99 different reasons why staff are directed to delete documents. The debate that has emerged in Ontario, that suggests that no document can ever really be deleted, is simply false. It needs to be confronted.

Mr. Bob Delaney: Okay. That's perhaps a little beyond the scope of the committee, and we'll talk to the commissioner herself next week.

However, just to belabour the point a bit, I'd like to talk about the Archives and Recordkeeping Act and how some of it related to the work that you did. As the act lays out and as you've pointed out a number of times, transitory records are not required to be kept. In fact, you've said they're required to be destroyed.

The common records series defines these records as, and I'll quote from it, "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

When we asked Secretary Wallace about his personal experience with transitory records, he told us—and again, his words—"from the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research

purposes, understand the basis of current decision-making—it would be irrelevant."

Does that seem to be an accurate characterization of transitory records, from your time working in government?

Mr. Chris Morley: Yes, and I will simply quote from—much discussion has emerged around what happens to email accounts at the end of someone's employment, and I'm sure we're going to get into that.

Mr. Bob Delaney: Okay.

Mr. Chris Morley: But what has been missed in this discussion is that the direction to staff is as follows, and this is from a record-keeping fact sheet called the Fine Art of Destruction: Weeding Out Transitory Records, page 2. I found it on the Web: "When dealing with transitory records, practising 'read and delete,' and making good use of your recycling bin and secure document destruction services (i.e. confidential shredding bins) are the keys to managing information effectively."

Mr. Bob Delaney: Okay. Let's talk a little bit about the relocation of the two gas plants. In the Mississauga case, the committee has heard that there was enormous community opposition to the plant. Community leaders, including our Mayor McCallion, have testified that there were serious health and environmental risks for the southeast Mississauga and the western Etobicoke areas. Can you elaborate on some of the concerns expressed by the community and by local MPPs about the siting of that plant?

Mr. Chris Morley: A couple of different characteristics, I would say, shaped my thinking, one of which is that between the time the plant was sited and 2011, two new condo towers very close to that site were under construction and planned. That was a reason why it became further inappropriate for that plant to move forward.

I had concern, and there was some public debate, about how polluted that airshed was. It's obviously a heavily congested area with car traffic, and that is something that certainly played into the thinking around how much smog and pollution would be spewed into the air from those gas plants.

Mr. Bob Delaney: At a news conference on May 7, following his testimony before this committee, former Premier Dalton McGuinty talked about a conversation he had with you leading up to the decision to commit to relocating the plant if the government was re-elected. He said, "Chris knew I felt we had got it wrong." Could you elaborate a little bit more on that conversation?

Mr. Chris Morley: Yes. As I said earlier, I had had a couple of conversations with the former Premier during the 2011 campaign. It sticks with me: His first instinct when I spoke to him was, you know, that we—and it's collectively the energy planners and other folks—got it wrong. It's inappropriate to foist a gas plant on a neighbourhood, in the shadow of a school—

Mr. Gilles Bisson: Sorry, before the election?

Mr. Chris Morley: —where there would be a gas plant where you couldn't put a single wind turbine.

To answer Mr. Bisson's question, that was during the election.

Mr. Bob Delaney: In your role, I assume you paid pretty close attention to the policies and the commitments of both the PC and the NDP parties. You would have been fully aware, then, that during the 2011 election, both opposition parties had pledged to cancel the plant. Correct?

Mr. Chris Morley: Yes, and I think, with regard to Oakville, I give Mr. Chudleigh a lot of credit, that he recognized early on that this was not an appropriate place for a gas plant. When he said, "The people of Oakville have told you they don't want the proposed gas-fired power plant ... and I agree with them"—that was in June—he was right. It took the government some time to catch up with him. I give the opposition parties a fair bit of credit here.

Mr. Bob Delaney: Okay. In fact, just about every witness before the committee has confirmed that there were clear commitments made by all three parties to either cancel or relocate the plant. My own constituent, Mayor Hazel McCallion—and I'll use her words—said, "The impression that was certainly given beyond a doubt ... I think all parties would have cancelled it...."

We have election flyers; we've got transcripts of robo-calls that confirm these very clear commitments. Given all of that, what do you make of the other two parties essentially rewriting history and putting all the blame on the government for following through on the very same commitment that they made to the people of Mississauga?

Mr. Chris Morley: Well, I will say this: I can't remember working on a file, in my period in the office of the Premier, where there was consensus among all three parties about a decision or about a direction the government should take. There was consensus.

When it comes to the Mississauga gas plant, the NDP, very clear, September 26, 2011: "We wouldn't build it."

Mr. Bob Delaney: Okay. So it wasn't a question of the "if"; it was merely the "when" and the "how."

Talking about the renegotiations in Mississauga: With all three parties committed to cancelling the plant, and it was the Liberals who were re-elected, it was then our responsibility to implement a commitment to relocate the Mississauga plant.

As construction had started at the plant, it was important to reach a deal to halt construction as soon as possible. Were you concerned that the longer construction continued, the higher the sunk costs would be?

Mr. Chris Morley: Yes, that was a concern. It was also my belief and my concern that the decision and the discussions and the negotiations to end construction and move that plant elsewhere—they didn't get any easier as time went on. Had the government not proceeded with that for another couple of weeks, that would not have made those discussions any easier at all.

0940

Mr. Bob Delaney: The Leader of the Opposition staged a number of news conferences in front of the Mis-

sissauga site. There was, in fact, the often-quoted campaign announcement where he said that under his government, the plant would be, to use his words, "done, done, done." After the election, he was at the site again to show reporters that construction was still continuing. They also circulated photos.

Did this political pressure from the opposition add to the difficulty of the negotiations?

Mr. Chris Morley: I do need to say that on or about November 2, 2011, I left with my family for a vacation, post the election, so I was not as involved in the file, for a period of some two and a half weeks, as I otherwise would have been.

There was consensus that the plant didn't belong there and that the construction should stop and negotiations should be entered into. Ultimately, that's what happened.

Mr. Bob Delaney: Let's try it from another direction, then. While the PCs pledged to cancel the plant outright as the government, the Liberals advocated, from the very beginning, for trying to relocate the plant to an alternative site. A lot of experts have come before the committee testifying that, in fact, this was the best path, as opposed to ripping up the original contract and paying damages without any power being produced.

From your viewpoint, was the right approach taken with respect to these negotiations?

Mr. Chris Morley: Yes, and I have every confidence in the following statement: Had the government decided to simply follow the advice of the PC Party given during the 2011 election and cancel the plant, as opposed to relocating it, that would have brought on additional costs to either taxpayers or ratepayers.

Mr. Bob Delaney: Earlier, Mr. Tabuns had asked you why the government sited the plants in those locations. Just to put on the record a quote from Jim Hinds from the OPA in response to a question from Mr. Tabuns on this topic:

"Typically, we don't site a plant. Typically, what happens is that a need is identified and a directive is issued by the minister to procure power...."

"They set up a process where independent power developers or people who wanted to build the plants would submit proposals, and then the TransCanada"—referring to the Oakville plant—"proposal at the Oakville site was selected. But that was TransCanada's site selection."

One of the questions we've often asked some of the people who've come before us is whether they had any thoughts on the siting process. In light of that question and some of the comments made, is there a thought that you can throw in on siting?

Mr. Chris Morley: I would think that there needs to be more done in terms of community engagement. I think that communities, if given the opportunity to recognize the fact that they are growing and have power needs, will embrace the idea that they need to make sure that they play part of a solution, whether that's transmission or generation.

I also think that the procurement process needs to be one where there are broader interests at play than just

which proposal checks the most boxes and which site the engineers think works best. I think these discussions are more complicated than that. There needs to be more opportunity for community input.

Mr. Bob Delaney: Continuing with the Oakville decision: The decision to relocate Oakville was made well before the 2011 election, correct?

Mr. Chris Morley: Correct. Almost a year to the day, if I recall.

Mr. Bob Delaney: In terms of the rationale for that decision, testimony before the committee has shown that there were serious issues with the siting of the plant, which included something you've mentioned: the over-taxed airshed, the lack of a buffer zone to ensure the safety of residents, and the proximity to homes, businesses and schools. Perhaps you could elaborate on the concerns you heard and how they contributed to the decision to relocate the Oakville plant.

Mr. Chris Morley: It had been made very clear to us that that was not welcomed by the community and by the neighbourhood. It was extraordinarily close to a school.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Chris Morley: It was in a location where you could not site a single wind turbine. All those factors added up to the fact that the opposition were right in getting there earlier. The opposition were right in their support for relocation of that plant. The government needed to rethink its position, and the government, through its powers to direct the OPA, ultimately did that.

Mr. Bob Delaney: Okay. Thanks, Chair. We'll stop there.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair.

Mr. Morley, I want to go back to the discussion based on something you had said earlier about your involvement in the gas plants. In a discussion where I had questioned Mr. Peter Wallace—I'll read my question and his answer: "But there is a specific document, and there's a cabinet minute, back on the 27th of July. Based on that, would you be able to supply a list of people who were either present or involved with or knew or ought to have known or were aware of Project Vapour, based on the fact that this—"

He interjected with: "At this particular point in time, the political involvement with Project Vapour from the Office of the Premier was a relatively small circle of individuals, likely including Chris Morley. I am not sure of the others who were involved at this point, in July 2011."

Is Mr. Wallace's statement accurate?

Mr. Chris Morley: That is a period after some of my colleagues on the political side were screened off the file: Mr. Steeve, Mullin and MacLennan. Ultimately, at that point, yes, I became more involved.

Mr. Victor Fedeli: So who else was involved, other than you, from the Premier's office?

Mr. Chris Morley: I can't recall bringing in anyone else. It may have been on a—I may have updated other people who were not screened off the file.

Mr. Victor Fedeli: Yeah, our records show pretty much the same thing. You ran the show. Your name is on pretty much every email that relates to Project Vapour, Project Vapour-lock. You're talking about—

Mr. Chris Morley: And just to be clear, you seem to be suggesting that there's something wrong with that.

Mr. Victor Fedeli: No, no. I'm just suggesting you're the guy. You're the guy with the answers. You're the guy who knows the answers, so I'm going to ask you a few questions.

Mr. Chris Morley: Great.

Mr. Victor Fedeli: And it's very clear that you're the guy—in your own words, there's nothing wrong with that—you are the guy in the Premier's office who has the answers.

So on July 29, now-Premier Wynne, former-Minister Wynne and chair of treasury board, signed a document on 29 July 2011, a cabinet minute that got this whole thing started. Are you familiar with that particular document? It's been given tremendous prominence by other people who have sat in that chair.

Mr. Chris Morley: The one thing I would say, the one thing I would disagree with you on is the fact that you suggested that's what got this whole thing started—

Mr. Victor Fedeli: Oh, it sure did.

Mr. Chris Morley: —which is, in fact, not true. The commitment by all three parties had been made many months before.

Mr. Victor Fedeli: No, no, no. We're talking about your government, the government that cancelled the gas plant.

Now let's get down to how much it cost. The whole thing started—the costing started—when that document was signed. So are you aware of the document that Kathleen Wynne signed on 29 July 2011—the cabinet minute? Do you know that document?

Mr. Chris Morley: It was at that point, in late July or early August—you have the date in front of you, so late July—

Mr. Victor Fedeli: Oh, I've seen the document many times.

Mr. Chris Morley: —when cabinet essentially approved the fact that we would enter into an arbitration agreement as the process through which any dispute with TransCanada would be resolved. That did not preclude negotiations but it did prevent litigation. And you've had government lawyers indicate before this committee that litigation is always a good thing to avoid.

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Mr. Victor Fedeli: Are you saying you know the document?

Mr. Chris Morley: Unless it's in my package, I am aware that a cabinet minute was signed—

Mr. Victor Fedeli: So you're aware that a cabinet minute was signed—

Mr. Chris Morley: —that entered into an arbitration agreement.

Mr. Victor Fedeli: —by Kathleen Wynne that started this whole process. It led to a letter seven days later from then-Minister Brad Duguid authorizing his then-deputy, David Lindsay, to proceed. It clearly outlines that there will be liability shared by both the crown—that's the taxpayer—and the OPA—that's the taxpayer as ratepayer. So you knew, Mr. Morley, that there were going to be two sets of costs as far back as July 2011 in the minister's letter.

Mr. Chris Morley: Not—

Mr. Victor Fedeli: Let me read you a part of the minister's letter. Before you answer, then, let me save you and answer it for you.

This is in the timeline that is supplied by William Bromm from the cabinet office: "Minister directs Deputy Minister Lindsay to sign arbitration agreement on August 5 and also to sign agreement with OPA re setting out how liability will be divided between OPA (ratepayers) and province (taxpayers)." Back in the end of July, early August, you then knew that there would be two sets of costs, one for the taxpayer and one for the ratepayer.

Mr. Chris Morley: I would say there was a possibility that there would be two sets of costs.

Mr. Victor Fedeli: Well, they set out how they were going to divide them. So you acknowledge there even was a possibility.

Mr. Chris Morley: I acknowledge that there was a possibility that there would be both costs to the ratepayer—

Mr. Victor Fedeli: You might be the first to actually acknowledge that, and I congratulate you on that.

Mr. Chris Morley: In fact, in fairness to me, I would argue that the letter that you have in your hand probably acknowledged that far before I did.

Mr. Victor Fedeli: You're the first who has sat and actually told us. You're the first from the government side; let's put it that way. We've had people from the OPA who sat here and said that everybody in the government knew, but we've not had anybody in the government actually say to us, "Yes, we knew the \$40 million was not the"—

Mr. Chris Morley: No, no, that's not what I said, sir. That's not what I said. In fact, the agreements—

Mr. Victor Fedeli: I heard you loud and clear that there were two sets of costs.

Mr. Chris Morley: No, no, no, no, no.

Interjection.

Mr. Victor Fedeli: Excuse me, I'm trying to have a conversation here, Mr. Del Duca.

We understand you acknowledged that liability would be divided between the OPA and the province.

Mr. Chris Morley: That is not what I said. In fact, the agreements that were struck, the final costs—I've never read them, because I had left the Premier's office many months before the agreements.

Mr. Victor Fedeli: No, no, I understand that. I appreciate that. I appreciate very much the fact that you acknowledge that you knew there were two sets of costs.

Mr. Chris Morley: No, no, no.

Mr. Victor Fedeli: Oh, yeah, yeah, yeah.

The Chair (Mr. Shafiq Qaadri): Gentlemen, simultaneous conversations drive us all crazy.

Mr. Victor Fedeli: I heard you; yeah, yeah, yeah.

Mr. Tabuns was questioning Mr. Lindsay, and he said, "Tiffany Turnbull in her testimony said that you met regularly with Chris Morley regarding the gas plant cancellations. Did you brief him on the costs and risks that you were being informed of by the OPA?" Mr. Lindsay asked, "Rough orders of magnitude?" and Mr. Tabuns responded, "Yes." Mr. Lindsay said, "Yes. It would have been a normal course of our briefings."

Mr. Lindsay said that he told you the rough order of magnitude of these costs. Are you agreeing with him or do you take exception to this?

Mr. Chris Morley: Let me speak specifically—

Mr. Victor Fedeli: It's a simple question. Is he telling the truth?

Mr. Chris Morley: Let me speak—

Mr. Victor Fedeli: Is Mr. Lindsay telling the truth? Did he tell you the rough order of magnitude of these costs? Take your time. Take the time to think about your answer. I can realize that you need to think this one through.

Mr. Chris Morley: Mr. Fedeli—

Mr. Victor Fedeli: Is Mr. Lindsay telling the truth?

Mr. Chris Morley: Mr. Fedeli—

Mr. Victor Fedeli: I'm asking you a question.

Mr. Chris Morley: Mr. Fedeli, I actually am fairly disinterested in whether you show me respect in this chair or not. As an Ontarian, just let me say that I was appalled at the behaviour that you showed last week towards the secretary of cabinet.

Mr. Victor Fedeli: The public is not disinterested in this. They are very interested in your deletion, your destruction, your destruction of backup tapes, the fact that you spent \$585 million plus plus plus. We're going to find out just how disinterested the public is in what you have to say.

I am asking you a question right now: Was Mr. Lindsay telling the truth when he told us that you knew the rough order of magnitude of the costs? Yes or no?

Mr. Chris Morley: Let me speak about Oakville.

Mr. Victor Fedeli: I'm asking you about the order of magnitude. Did you know how much this was going to cost, roughly?

Mr. Chris Morley: Can I speak about Oakville?

Mr. Victor Fedeli: I have asked you a question. I'm hoping you're going to answer it. Take some time and think about your answer.

Mr. Chris Morley: So let me speak about Oakville. In the summer of 2011, I would have known the following. It would have been fairly understood and known—and I would have been one of those to know—that there would have been sunk costs into the Oakville site in the

magnitude of \$40 million. That has been testified to before this committee.

I would have also been aware at that point, and well on the public record, that there would have been some rather expensive turbines for a gas plant that would have been ordered and were under construction.

But until the final agreements were reached, which were reached after I left the Office of the Premier, nobody would have known—or, at least, I wouldn't have known—what the actual structure of those agreements would have been, the length of time that they were, and what the costs were. I also understand from media reports that some of the costs to government actually reduced, in terms of the payment. The cost can only be calculated after an agreement is struck—

Mr. Victor Fedeli: Look, I appreciate that. I'm asking you: Did you know there were two sets of costs? You've already acknowledged now that you have. In fact, earlier, you denied the \$40 million, and now you've brought up the sentence that said you're one of those who knew about the \$40 million. You've contradicted yourself within two minutes. Did you know about the \$40 million or not?

Mr. Chris Morley: It would have been understood that the sunk costs were \$40 million. That does not—

Mr. Victor Fedeli: When I asked you about the cost earlier—

Mr. Chris Morley: No, no, that doesn't necessarily mean—

Mr. Victor Fedeli: —you said you didn't know. When I brought up \$40 million, you said you didn't know anything about that.

Mr. Chris Morley: No, no, no. It doesn't necessarily mean that the structure of the agreement would deal with the \$40 million in the same way.

Mr. Victor Fedeli: Oh, I hear you loud and clear. You identify, then, that there are two sets of costs, and you would have known, back as early as July or August, that there are indeed costs to the taxpayer—\$40 million—and costs to the ratepayer—unknown yet, but large, in the hundreds of millions.

Mr. Chris Morley: No, sir. It is impossible to calculate the costs of a final agreement until an actual agreement is struck. The agreement to relocate, for example, the Oakville gas plant was not struck for at least another 12 months. That's actually when you can start calculating costs.

Mr. Victor Fedeli: I'm not asking about the actual costs; I'm asking about when you knew. You're as reluctant to tell us you knew as everybody else is. We know why you don't want to tell us when you knew: because your cabinet colleagues—the cabinet and the Liberal caucus have stood up and said, early in the game, "You have all the documents." They've said it's \$40 million.

Minister Bentley sat here and said, "You're going to hear a lot of numbers. Forget about everything else. All you have to remember is \$40 million."

Meanwhile, there are several hundred million, off on the other side, that are being foisted onto the ratepayer through the OPA—forced onto the ratepayer—to be paid.

We found that in Mississauga. We found that, very clear, when the Auditor General sat where you're sitting and said, "Yep, there were sunk costs but, boy, there were hundreds of millions, as it turned out, in other costs, and they knew it back in July." That's what the auditor told us: You knew it back in July.

Mr. Chris Morley: I'm not sure, Chair. Can you clarify if there was a question there?

Mr. Victor Fedeli: I'll get to one.

Mr. Gilles Bisson: While you're waiting, I can—

Mr. Victor Fedeli: No, I can take it from there.

Do they have our set of documents, Chair?

Mr. Chris Morley: I do, yes.

Mr. Victor Fedeli: Okay. I want to go back to the point of when you would have briefed the Premier's office about those extra costs: the sunk cost versus cost to the ratepayer. When would that discussion have been held in the Premier's office?

Mr. Chris Morley: Well, I was in the Premier's office.

Mr. Victor Fedeli: With the Premier, perhaps.

Mr. Chris Morley: I had a discussion with the Premier, prior to the government entering into the arbitration agreement, and indicated that we had an opportunity to avoid litigation; that it was essentially a process issue around how we would resolve the dispute if it could not be resolved through negotiation. The Premier agreed that that was a prudent path forward, and ultimately, that decision was eventually approved by the government.

Mr. Victor Fedeli: So would you have informed him that the cost would be in the hundreds of millions for Oakville?

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Mr. Chris Morley: No. In fact, you folks have a document which describes the briefings that I would have given to members who signed—

Mr. Victor Fedeli: Is that the one that says—

Mr. Chris Morley: —the cabinet document.

Mr. Victor Fedeli: —they offered them \$712 million? We have that document, where they offered \$712 million, and TransCanada rejected that one.

What about Mississauga? Can you tell us what number you briefed the Premier on the cancellation cost of Mississauga?

Mr. Chris Morley: I'm going to refer to an email, July 28, 2011—

Mr. Victor Fedeli: I've asked you about Mississauga.

Mr. Chris Morley: —from myself about Oakville.

Mr. Victor Fedeli: I've asked you about Mississauga.

Mr. Chris Morley: Well, the last bit of this email says—

Mr. Victor Fedeli: If you don't want to answer the question about Mississauga, I can understand why—

The Chair (Mr. Shafiq Qaadri): Gentlemen.

Mr. Victor Fedeli: —so let me ask you, on Mississauga—

Mr. Chris Morley: I'm answering your previous question.

Mr. Victor Fedeli: I asked you about Mississauga. Who decided to use the \$40 million in Oakville and the \$190-million number in Mississauga? Who decided to use those numbers? Was it you?

Mr. Chris Morley: An email—

Mr. Victor Fedeli: Did you decide to use those numbers? Were those your numbers to the Premier: \$40 million and \$190 million?

Mr. Chris Morley: So you're talking about decisions made by cabinet, and in an email of July 28, 2011, at 8:44 p.m.—

Mr. Victor Fedeli: You're three questions ago here.

Mr. Chris Morley: I indicated that I had spoken—

Mr. Victor Fedeli: We're moving along here.

Mr. Chris Morley: —with four ministers. And on the issue of costs, I said, "I have promised this is agreement on arbitration process only, and any negotiated settlement would have another touch point with cabinet." That would have been consistent with the conversations that I had with the Premier.

Now, to your next question, those agreements—

Mr. Victor Fedeli: So did you tell them back then that there are two sets of costs, one for the ratepayers and one for the taxpayers?

Mr. Chris Morley: Now, with regard to your next question, I had left the Office of the Premier. I left the Office of the Premier on June 1, 2012. Four weeks later, I had a son born. To be frank, when the discussions and agreements regarding relocation of the Mississauga and Oakville gas plants were surfaced, I read about them in the media. I have not read the Auditor General's report; I have not read any detailed calculations by the Ontario Power Authority. To be frank, I was more interested in family responsibilities at that point. I was no longer in the employ of the government.

Mr. Victor Fedeli: So let's go back to when you were. On July 28, the day before the cabinet memo was signed by Kathleen Wynne, there's an email from you. It's doc 1, 4 of 5, and it's from you to Shelly Jamieson and other people.

Mr. Chris Morley: Yes. I just read from it.

Mr. Victor Fedeli: It says, "I've now spoken with four who have been briefed and are willing to sign necessary docs...." It says how they are going to sign—long pens—and "Wynne, who is down at Queen's Park for an event ... tomorrow." So you briefed them. Did you also brief them that there would be two sets of costs: one for the ratepayer and one for the taxpayer? Was that part of the briefing?

Mr. Chris Morley: The arbitration agreement that was entered into at that point was essentially around what process would be used to resolve a dispute between the government, the OPA and TransCanada. It was essentially, in keeping with—you've had testimony from government lawyers who have said that avoiding litigation is usually the best practice.

Mr. Victor Fedeli: I understand that. Yes, I hear you loud and clear. So I'm asking you—

Mr. Chris Morley: And I'm actually very pleased that this document has been released.

Mr. Victor Fedeli: Would you have known—

Mr. Chris Morley: It says, "I have promised this is agreement on arbitration process only, and any negotiated settlement"—i.e., cost—"would have another touch point with cabinet." It was a process approval.

Mr. Victor Fedeli: So only a couple of days later, then, the document that states that there is going to be a division of costs between ratepayers and taxpayers—that came out of the blue? There was no knowledge then that there would be additional costs? This is only August 5. This is only six days later: The minister directs Deputy Minister Lindsay to sign the arbitration agreement and also to sign agreement with OPA setting out how the liability is divided.

So was that document not part of the initial discussion? They were blindly signing an arbitration agreement that was going to add hundreds of millions of costs to ratepayers and taxpayers, and nobody knew the magnitude? We were told here earlier you knew the magnitude of costs. So you kept that information to yourself?

Mr. Chris Morley: The arbitration agreement was essentially a process through which disputes would be resolved. And, to be frank, you're talking about costs associated with an agreement that had not yet been reached. In fact, it was some 12 months later.

Mr. Victor Fedeli: Oh, I understand the magnitude you were aware of—you may not have known the precise number. It's very clear. We still don't know the precise number. That's why the Auditor General has been called in to get us that precise number. We'll be learning about those extra hundreds of millions, I'm sure, in a couple of months.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: At the time of that signing, it says that you briefed Kathleen Wynne and the others. Did you brief her and the others on the fact that there would be a division between the ratepayer and the taxpayer?

Mr. Chris Morley: I would have briefed her on the fact that this was a process to resolve a dispute with TransCanada, and I would have briefed her on the fact—as the email indicates, "I have promised this is agreement on the arbitration process only, and any negotiated settlement would have another touch point with cabinet."

Mr. Victor Fedeli: A couple of days later, the minister directed the deputy minister to sign the agreement with OPA, setting up the two costs. Would you have briefed anybody on the fact that there were going to be these extra costs, and would you have briefed them on the magnitude of those costs?

Mr. Chris Morley: We were 12 months before any agreement—

Mr. Victor Fedeli: I understand we don't know the number, and I can see why you don't want to answer. I can see—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

To Mr. Tabuns: 10 minutes.

Mr. Peter Tabuns: We'll start with my colleague.

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson.

Mr. Gilles Bisson: In regard to the role of Ms. Wynne in regard to this cabinet meeting, in which you dealt with arbitration: She was aware of what was being discussed and all of the details related to the arbitration?

Mr. Chris Morley: She would have been aware that the process was—essentially, it was a process change. Up to that point, there had been the possibility of litigation through discussions with TransCanada and the OPA. There would have been an acknowledgement and an agreement that the government and its partners would enter into a process which is, if there's going to be a dispute, it would be resolved through arbitration, as opposed to litigation.

Mr. Gilles Bisson: My point is, though, she would have been aware of the details of the arbitration.

Mr. Chris Morley: I can—

Mr. Gilles Bisson: Your email of July 28 says that you had actually spoken to Bentley, Duncan, Duguid, Wynne—

Mr. Chris Morley: And I frequently did that. That is completely in keeping with my practice. What that email very clearly says is that it should be—

Mr. Gilles Bisson: It's about the arbitration.

Mr. Chris Morley:—arbitration. It's a process, and should there be a negotiated settlement, there would be another touch point with cabinet.

Mr. Gilles Bisson: That's not in dispute. My point is, the details of what the arbitration is all about, the costs and all that kind of stuff, would have been known because that was just the nature of what you were doing: briefing those ministers in regard to the arbitration.

Mr. Chris Morley: I would have had a conversation with all four ministers who signed, and I would have laid out that this was the process that the government would—

Mr. Gilles Bisson:—in the details of the arbitration. Let me get to the point, because you're asking, in this July 28 document, to get these particular individuals—Ministers Bentley, Duncan, Duguid and Wynne—to sign. Obviously, they had to have signed something to allow the arbitration to go forward.

Mr. Chris Morley: They would have signed a cabinet minute, which I believe you have.

Mr. Gilles Bisson: Who chaired that meeting the next day?

Mr. Chris Morley: To be fair, I don't know.

Mr. Gilles Bisson: I'll just remind you. An email from Scott-Vickers, James to Chris Giannikos, that essentially says, "For further confirmation, the walk-around was completed at 2:45"—this is on July 29. Minister Wynne chaired that meeting. As chair of the meeting, she would have had some level of briefing as to what the heck was going to be discussed at that particular meeting, right?

Mr. Chris Morley: I would have had a phone call with her and all ministers who were signing it. I would have talked them through the fact that this was a decision by the government—

Mr. Gilles Bisson: Did you talk about cost in that arbitration discussion?

Mr. Chris Morley: I don't believe I did.

Mr. Gilles Bisson: So you talk about arbitration and don't raise cost; just like you don't keep notes about gas plants. Okay.

She was part of the decision-making process and signed off on this, correct?

Mr. Chris Morley: There is a cabinet minute with four signatures on it.

Mr. Gilles Bisson: Including hers, right?

Mr. Chris Morley: I don't have the minute in front of me, but I accept your characterization.

Mr. Gilles Bisson: Okay, very good.

Let me ask you a different question before I hand it over to my friend Mr. Tabuns. The estimates committee had required documents in regard to this particular issue. Were you in any way involved in that process of the release of documents to the original request?

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Mr. Chris Morley: No.

Mr. Gilles Bisson: Did you or anybody in the Premier's office have any role in withholding the documents that were requested by the estimates committee?

Mr. Chris Morley: So, I may be off by a day or two in my dates, and I'm sure you'll forgive me. My departure from the Office of the Premier was announced on May 2, 2012.

Mr. Gilles Bisson: Yes.

Mr. Chris Morley: The estimates committee, I believe, made its first request for information—I think it was May 16. Is that right, Mr. Leone? Thank you. The last week that I was there, we essentially did a transition period. Between May 2 and my last day, June 1, I had no role in—

Mr. Gilles Bisson: Well, you were there, because I was negotiating with you at the time. The budget happened in the month of May last year.

Mr. Chris Morley: No, sir. That was done in April.

Mr. Gilles Bisson: I thought it was May. Okay, I stand corrected. To your knowledge, would it have been appropriate at the time, or would the Premier's office have been informed of such a request, knowing the operations of the Premier?

Mr. Chris Morley: It would have been entirely appropriate for them to be aware of any issue before the Legislature.

Mr. Gilles Bisson: Okay. And would they have been involved at some times in these kinds of decisions?

Mr. Chris Morley: I wouldn't speculate on what people were or were not involved with after my departure.

Mr. Gilles Bisson: Okay. My friend, Mr. Tabuns.

Mr. Peter Tabuns: Thanks, Mr. Bisson. What was the role of Dave Gene in the cancellation of the Mississauga power plant?

Mr. Chris Morley: I don't recall talking to Dave. He certainly would have been part of the consensus that that be a commitment to be made by the Ontario Liberal Party. Essentially, part of our platform—in other parts of the world they would call it a manifesto, and he would have been aware of that. He would have, I suspect, been comfortable with that. It's possible I talked to him about it; I don't recall.

Mr. Peter Tabuns: You don't have a recollection. Did you contact Bob Prichard about the Mississauga plant?

Mr. Chris Morley: I don't have any—so I knew that Mr. Prichard was being retained. I supported that. In fact, I thought it was a good idea. Obviously, by the time I think he was retained or shortly before, we were—whether it was the government or the OPA—involved in litigation in Ontario and New York. I think extraordinarily highly of Mr. Prichard. I think he is a very seasoned lawyer, and to be frank—

Mr. Peter Tabuns: Can I just ask you, though—

Mr. Chris Morley: —but the recommendation to retain him—

Mr. Peter Tabuns: Was by—

Mr. Chris Morley: —was through the Ontario public service. In fact, I can remember being informed, I believe—I can remember being informed from the public service that he'd be retained.

Mr. Peter Tabuns: That would be fine. I listened to your comments at the very beginning about transitory records and deletion and destruction of records. Are you saying that the Information and Privacy Commissioner got it wrong in her report?

Mr. Chris Morley: No, I'm saying that, as far as I know, I'm the only one, at least in this room today, that has assembled a list of all the reasons why I believe—having gone through the records, having gone through the rules—why it is appropriate, when it is appropriate and when it is required for staff on the political side and in the Ontario public service to delete records.

I'd like to explore this a little bit, because there are different headings, there are different examples—

Mr. Peter Tabuns: I would appreciate it if you didn't use my time up on that. The Information and Privacy Commissioner felt that there was a lack of proper record-keeping in the Premier's office. Do you think she was wrong?

Mr. Chris Morley: What I know is that the Information and Privacy Commissioner never spoke to me about her report. As far as I'm concerned, that report has nothing to do with me. She never discussed with me how I would have complied with the Archives and Record-keeping Act and the Premier's Office Records Schedule. Had she done that, I would have provided her with a draft of all the reasons—based on some thorough work, some thorough research—that require staff to delete records.

Mr. Peter Tabuns: So are you saying that she got it wrong in her assessment of the way the Premier's office operated with regard to record-keeping?

Mr. Chris Morley: I'm saying that she never spoke to me about her report. She has no idea how I dealt with my records, and as far as I'm concerned—to be frank, you folks have far more resources and staff than I do and I would not be surprised if you folks had a list, perhaps even a slightly different list.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Chris Morley: I actually encourage you folks, if you have one, to pull it out. Let's see it. Let's see the reasons why you folks think it's entirely in keeping with the rules to delete and destroy a record, because I came up with 99. You folks can go through the same thing and come up with 103 rules.

Mr. Peter Tabuns: I appreciate your ability to count, but if I could go on to another question in my last moment. You were facing a lawsuit in the spring of 2011. TransCanada had given notice. Did you take extra measures to ensure that records were preserved in the face of a potential lawsuit?

Mr. Chris Morley: My colleagues who had had interaction with TransCanada at that point, Mr. Steeve and Mr. Mullin, were screened off the file and were interviewed by government lawyers. They had kept notes, appropriately so, of those meetings. At the request of counsel, they turned those records over to government lawyers, and those are now in the public record.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

Mr. Bob Delaney: Okay. I'm actually going to give you a chance to clarify some of the things that you were trying to say before some of the questioners seemed to want to put words in your mouth. What did you mean when you said it's possible that costs could go on either the tax or the rate base?

Mr. Chris Morley: At that point there was no structure of what an agreement to settle the Oakville relocation might be. Essentially what there was was the process, and that process could—as I think paper records indicate—involve a sharing of costs between both the Ontario Power Authority and the government. I would say it is entirely reasonable that the possibility be recognized. But what the structure of the deal actually came to be 12 months later, to be frank, I have no idea. I have not read it.

Mr. Bob Delaney: In other words, all of this discussion around what happened in the summer of 2011, this was about an arbitration process, not an arbitration outcome, correct?

Mr. Chris Morley: Correct.

Mr. Bob Delaney: Thank you. On the issue of note-taking that some of our colleagues have come back to, you said earlier that Mr. Steeve was the lead on the Oakville relocation. As it turns out, the committee does have copies of his handwritten notes, which seems to make sense that the person who was the lead on the file

took the notes and turned them over to this committee. Is that consistent with your recollection?

Mr. Chris Morley: Yes. Mr. Steeve was the lead on the file until the spring of 2011. He was removed. He turned over his documents to government lawyers in keeping with the rules.

Mr. Bob Delaney: Okay, that's all we needed—

Mr. Chris Morley: And I recognize that I have before me a stack of documents from the PC Party which have also been released in keeping with the rules.

One interesting thing that I found in preparing for today's testimony—I believe that this is probably the most transparent and investigated government decision in Ontario history. More than a million documents have been reviewed. More than 100,000 documents have been released. You folks, through your directives, have blown through four industrial printers. There is a very thorough paper record that illustrates the decisions that were made.

Mr. Bob Delaney: Okay. Let's come back, then, to Oakville. We've heard from numerous witnesses that the best path forward after the decision was made not to move ahead with the Oakville plant was to renegotiate an alternative site with TransCanada. Witnesses have testified that this was the better path as opposed to ripping up the original contract and paying damages with no new power being produced. Former Deputy Minister of Energy David Lindsay said to the committee, "Paying costs and getting no electricity would not be a very good business decision."

First of all, do you agree with that? Anything you want to expand on?

1020

Mr. Chris Morley: There was consensus between the government and the OPA that it would be prudent to actually get electricity as a result of the deal to relocate. I agreed with that. I think everyone agreed with that. I will note that the commitment made by the PC Party with regard to Mississauga was not to relocate the plant, but instead to have a more costly option, which was to cancel the contract. They'd cancel it.

Mr. Bob Delaney: Which is a point that I think is well worth making.

Mr. Chris Morley: I'm shocked to hear that.

Mr. Bob Delaney: Again, former Deputy Minister of Energy David Lindsay also said that "if you have a contract and you don't honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure." Continuing on, from the Attorney General's office, John Kelly said, "I'm fairly satisfied there would have been litigation." He was referring to if the government and the OPA had not negotiated with TCE on an alternative plant. He also said, as a lawyer, "In my experience, after 40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk."

Under these circumstances, do you feel that the optimum way for the government to avoid what appears to have been a direct collision course with litigation was

to renegotiate a new plant with TCE or to find a new project?

Mr. Chris Morley: Yes, and my view is that the government would not have avoided litigation had Mr. Steeve and Mr. Mullin not acted and had the appropriate conversations with TransCanada at the appropriate time. In fact, prior to them meeting with TransCanada to indicate that we would be looking for another site, they met with officials in the Ministry of Energy on the public service side and were given advice. One of the things that they were advised to say and which they did relay to TransCanada was, "Don't commence litigation now. Let's have a conversation. You folks can have a conversation with the appropriate people about our power plant needs and how we might be able to relocate this facility."

Mr. Bob Delaney: Okay. The July 27, 2011, cabinet meeting again: That was the minute that was to propose the creation of an arbitration process, not to dictate the arbitration outcome. One of the four ministers who signed that walk-around was then-Minister of Transportation Kathleen Wynne, who was not responsible for energy infrastructure projects. When she appeared at the committee, she said, "[T]hat happened to me fairly frequently ... because I was a Toronto member, and if it were a Friday or it was a day when the House wasn't sitting, I would often be in my constituency office or I would be available." Would that also be your recollection of why she would have signed this particular cabinet minute in July 2011?

Mr. Chris Morley: Yes. Cabinet minutes are the way that governments officially recognize some decisions that have to be ratified or approved by cabinet. She always liked to do fewer approvals by cabinet in that manner than more, but she was amongst the closest members to the Queen's Park precinct, and from time to time she was called to sign those documents.

Mr. Bob Delaney: When she was briefed before signing the minute, the Premier told us—and I'll use her words—"I would always ask for an understanding of what it was I was signing, especially if it wasn't something on a file that I was familiar with. The briefing would have been very high level and, again, there would not have been specific numbers attached to it." In your recollection, would you agree with that?

Mr. Chris Morley: Not only do I agree with it, but there is a record which is in keeping with that. This was not a discussion about a negotiated settlement; this was an approval around the process.

Mr. Bob Delaney: At this stage, then, cabinet would have just been signing off on the beginning stages of an arbitration process and affirming the commitment to renegotiate with the company, TransCanada Energy, and that negotiations were ongoing. So it wouldn't have been unusual that financial parameters that had not then been negotiated weren't clear at this time. Correct?

Mr. Chris Morley: Correct. It was some 14 months later that an agreement was actually struck between the government, the OPA and TransCanada.

Mr. Bob Delaney: We've got a few minutes remaining. Are there some points that you had wanted to make that you hadn't had time to make?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Bob Delaney: A quick comment, then.

Mr. Chris Morley: Again, I strongly urge members, when it comes to the issues around document disclosure, to take a very transparent approach on a go-forward basis with very clear laws, so there is not a list of 99 different reasons why staff are directed to delete an email. I have to say that I think opening that up to all government records—make it a very clear standard, expect that they be released in some sort of real time, with 60 or 90 days, and that that also extend to MPPs. I think that, in some respects, is in keeping with the fact that it's a minority Parliament and in some respects power is shared between the parties.

Mr. Bob Delaney: Okay. Thanks very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the Conservative side: Mr. Leone.

Mr. Rob Leone: Thank you, Mr. Chair, and Mr. Morley, for being here. You stated earlier in your testimony that this has been the most transparent investigation of a government deal in Ontario's history. I believe you said that.

This all started, again, last year in estimates, where we asked a very simple question: How much did the Oakville cancellation cost and how much did the Mississauga cancellation cost? We didn't get answers to those simple questions. That's what led to the motion on May 16, that's what led to a point of privilege in the Legislature, that's what's led to this. And now we have an OPP investigation involved; the privacy commissioner has weighed in. It seems that the government is only transparent when we demand transparency.

My question for you is: Given the magnitude that we've had to go to just to get those simple answers—you've said, "We released hundreds of thousands of pages and went through four industrial printers"—why don't we have a simple answer to the question: How much did the Mississauga plant cancellation cost and how much did the Oakville plant cancellation cost?

Mr. Chris Morley: What you have is agreements, which I believe you folks have, which were struck and agreed to after I left the Office of the Premier. I have not read them. I understand and acknowledge that the Auditor General has done some calculation of, I think, one of them and I forget which one of them—

Mr. Rob Leone: Mississauga.

Mr. Chris Morley: —Mississauga first, and then Oakville is to come. Those are rightly questions for people who have at least read the documents. Again, I was not a government official at that time; I was a private citizen.

Mr. Rob Leone: You announced your resignation on May 22, I think you said.

Mr. Chris Morley: May 2, I believe.

Mr. Rob Leone: May 2 for June 1.

Mr. Chris Morley: Yes, correct.

Mr. Rob Leone: Our motion was May 16 for documents to be produced for May 30. You still would have been the chief of staff at the time even though you were transitioning.

Mr. Chris Morley: Yes, the last week of May I essentially had said, "I'm no longer the chief of staff. I'm around in kind of an advisory"—

Mr. Rob Leone: But you'd take phone calls if someone had a question of a serious nature like, "Hey, they want us to release all these documents from the Ministry of Energy and the Ontario Power Authority. I'm going to produce a letter that says, 'No, we're not going to release those documents.'" You probably would have been aware of that on May 30.

Mr. Chris Morley: No. No, I would not—

Mr. Rob Leone: You wouldn't have been aware of that?

Mr. Chris Morley: No. I have no recollection of that.

Mr. Rob Leone: All right. While you were Premier McGuinty's chief of staff, did you ever order the deletion or destruction of emails or documents?

Mr. Chris Morley: No, but I will say that—and I have done some very thorough research—the rules do require that staff in the Ontario public service and on the political side destroy some emails and documents. It's not—

Mr. Rob Leone: I understand that. You've gone to some length and I've read your table here—

Mr. Chris Morley: Yes. It's not—

Mr. Rob Leone: And I thank you for producing that. But the question I have for you is that we're dealing with the mass deletion of all files, of all emails, of all documents on computers, and you were the chief of staff. Did you ever order the mass deletion of emails—I actually say mass destruction of emails—

Mr. Chris Morley: Right.

Mr. Rob Leone: —to be done by departing members of the Premier's office and so on?

1030

Mr. Chris Morley: No. But let me quote from what the rules say. According to the Ministry of Government Services rules recordkeeping fact sheet *The Fine Art of Destruction*, the direction to staff is, "Ensure that you regularly scan for transitory records and delete as you go." That is the direction to people. This isn't a question of what happens when you leave.

Mr. Rob Leone: The protocol of the Premier's office when they wiped hard drives and email accounts clean was that they would put it on portable electronic devices. That was the protocol that was established. When you were chief of staff, did you ever order those to happen for departing members of your office?

Mr. Chris Morley: I will quote the Information and Privacy Commissioner on this. I did not do that. And her office's quote with regard to downloading of information onto USB keys or other things is, "It doesn't say in the report anything about files downloaded onto USB keys." The quote continues, "She doesn't believe that happened, and if she did she would have put it" on the record.

Mr. Rob Leone: She can't prove it, though, because—

Mr. Chris Morley: I know this doesn't jive with your narrative that you've chosen to pursue, but the fact of the matter is—

Mr. Rob Leone: It's not a narrative that I have chosen to pursue. You—

Mr. Chris Morley: The fact of the matter is—

Mr. Rob Leone: —answered simple questions. That's why we're here.

Mr. Chris Morley: The fact of the matter is, the direction to staff, going back as far as 1999, was that some documents—duplicate records, for example, transitory records, records of short-term value, records of no on-going value—

Mr. Rob Leone: We understand that.

Mr. Chris Morley: Those records must be deleted.

Mr. Rob Leone: That's fine. It says here, on PC doc 7, page 8 of 14—and it's scratched out, redacted, if you will—"It is the practice of departing"—

Mr. Chris Morley: Sorry, can I find it?

Mr. Rob Leone: Document 7, page 8 of 14, bottom paragraph, scratched out: "It is the practice of departing PO staff"—which I'm assuming is Premier's office—"to ensure that business records are passed on to their successors." That's what it says there.

Mr. Chris Morley: Yes.

Mr. Rob Leone: Right, okay? Now when I asked—David Livingston assumed the position of chief of staff upon Mr. Morley's departure—Mr. Livingston confirmed that he conducted a search and located no records responsive to an FOI request, which is what this is about.

So there is a practice of passing on information to successors; I mean, everyone changes jobs every now and then—you did yourself—

Mr. Chris Morley: Yes.

Mr. Rob Leone: —to pursue a different outlook. Congratulations on your baby, by the way. But the point here is that records are passed on, and when we have a pertinent file like we have on this one, which is costing taxpayers hundreds of millions of dollars, it doesn't pass the sniff test when we don't have any responsive records from the Premier's top guy.

Mr. Chris Morley: You actually do have some records from me. You have records from me that were appropriately, and in keeping with the rules, filed in Cabinet Office and the Ministry of Energy. We've actually discussed some of them. I quoted from them.

Mr. Rob Leone: Sure.

Mr. Chris Morley: You've quoted from them. So I have to disagree with the premise of the question. It is entirely appropriate and in keeping with the rules, and in fact good practice, for duplicate records essentially not to be kept in all places over time. That's essentially what the directive is.

Mr. Rob Leone: But David Livingston, upon taking office, says he didn't find any. That in fact didn't happen when he searched.

Mr. Chris Morley: So there were—

Mr. Rob Leone: So he searched and magically there were no records. We search and magically the records appear. That's exactly your testimony.

Mr. Chris Morley: So there were no records on this file that were transferred to Mr. Livingston.

Mr. Rob Leone: So do you have currently in the Archives of Ontario records pertaining to Mississauga and Oakville power plants at all?

Mr. Chris Morley: No.

Mr. Rob Leone: None at all?

Mr. Chris Morley: No.

Mr. Rob Leone: Okay. So you just answered previously that you said that you had documents and you've turned them over.

Mr. Chris Morley: No. I had documents. They related to—as I said in my opening statement—Samsung renewable energy agreement, teachers' negotiations and the budget discussions with the NDP. I followed the law. I set, from time to time, records aside, knowing that they had some ongoing value, knowing that the Premier's Office Records Schedule or otherwise required that. And that's the way I managed them.

Mr. Rob Leone: So if you turn to page 12, PC doc number 7, page 12 of the same response—

Mr. Chris Morley: Page 12 of 14, is that right?

Mr. Rob Leone: Page 12 of 14.

Mr. Chris Morley: Thank you.

Mr. Rob Leone: It talks about how backup drives, backup tapes of servers, including email servers, "in the PO are made at the end of each business day and held for 10 ... days." We have a lot of questions about this, by the way. We could actually access the backup documents. "[T]here is no backup tape in existence that could provide access to deleted emails or the emails of Mr. Morley." That's what it states in here.

Mr. Chris Morley: So I will quote the secretary of cabinet in saying, "The wrapping up of email accounts would be a perfectly routine business. It's done in all businesses. There's no expectation in the archives act or anyplace else that records be kept forever in digital form...." That's actually what the rules state.

I hope that I have advanced the discussion a little bit this morning. I hope that I've actually begun to enter into the public conversation what the actual rules were, because I think that's important.

Mr. Rob Leone: You know, Mr. Morley, what I hope is that people who are employed by the government of Ontario actually work to protect the taxpayer. That's what I hope. The fact is that every stage that we've seen here investigating this is the fact that—

The Chair (Mr. Shafiq Qaadri): Gentlemen, time for the hopes has now expired. We'll take a 10-minute recess.

Thank you, Mr. Morley, for your testimony. You're officially dismissed.

The committee recessed from 1036 to 1104.

MS. EMILY MARANGONI

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The Standing Committee on Justice Policy is back in session. I invite Ms. Marangoni to please come forward in her capacity as deputy director of human resources, Office of the Premier.

Welcome. I invite you to please be sworn in by our Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Ms. Emily Marangoni: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Marangoni. You have five minutes for an opening address, beginning now.

Ms. Emily Marangoni: Thank you and good morning. As earlier stated, my name is Emily Marangoni. I'm the deputy director of human resources in the Office of the Premier. I have been with the Premier's office since November 2006 and have worked in different capacities for the past six and a half years. I understand that I have been called before this committee because I was named as the person responsible for staff exiting or transferring from the Premier's office and that I'm the one who gives direction when it's time to purge their email account.

I think it's important to explain the process I use when a staff member leaves the Premier's office. I have been following this procedure since I arrived at Queen's Park, and I believe this process was also followed before I arrived.

Upon notification of a staff member's termination or transfer, I use what is called the government property recovery checklist, or, in short, the GPRF. I am providing this committee with a copy of the form. This is a form that is generated from Cabinet Office to help me retrieve all government property from the staff member leaving or transferring. This form consists of six sections: accommodations, telecommunications, financial management, information technology, other, and additional comments and/or special requests. Under the information technology section are the following five categories: BlackBerry and accessories, laptop and accessories, portable printer and accessories, computer network access disabled, and purge employee email accounts and H: drive files.

My job is to ensure that all government equipment is left behind when a staff member leaves our office. It is also my responsibility to ensure that all email accounts are purged so that no one can accidentally email the wrong account.

This procedure isn't perfect. One particular problem that seems to occur is that, despite my requests that an email be purged, every so often we have a staff member return from another ministry, who hasn't been with us for a number of years log into their email account and find

hundreds of emails from people who have been emailing them on the OPO account while they were gone. When I realize something like this has occurred, I call Cabinet Office IT to find out who else should have been purged but is still on the active employee list.

I would like to be clear: I do not call IT on a regular basis to discuss purging accounts. I would only call when an issue arose. Only then would we go through the list, and I would tell them who was no longer in our office and should be purged. IT would identify if there was an FOI request, but never asked me if emails had been archived. If IT advised me that there was an FOI, I did not ask that they delete the email accounts. I have always waited for confirmation that the email accounts could be purged.

As the Secretary of Cabinet, Peter Wallace, said last week when he was here before you, "You know, just to be really clear, this is just ordinary practice. Accounts are deleted."

Regarding the emails this committee is most interested in, which are Chris Morley, Jamison Steeve and Sean Mullin, I followed normal procedures, as I do for all staff leaving the Premier's office. I collected all the equipment and returned it, along with the completed forms, to Cabinet Office. When their email accounts were purged, there were no FOI requests at that time for the Premier's office. If there had been, their accounts would not have been purged. Their email accounts would be, with the other Premier's office staff, currently disabled because there now is an FOI request. Also, they were not the only staff emails purged at that time. There was a number of staff who had left who still had active email accounts.

Over the past few months, and through Premier Wynne's direction, we have made a few changes to our offer letter when hiring new staff for the Premier's office or ministers' offices. Our offer letter has always stated the following: "You are bound by the ethical framework governing ministers' staff, Premier's office, and, as such, are responsible for ensuring that you satisfy the requirements of the conflict of interest regulation. Please contact Lynn Morrison, the Integrity Commissioner, to discuss any actual or potential conflicts of interest." In the last few months, we have included the following: "You are also bound by the requirements of the Archives and Recordkeeping Act, 2006, to properly maintain records created or received in your office that relate to your official duties. Information about these obligations will be made available to you, so please familiarize yourself with these requirements."

After our initial offer letter, Cabinet Office HR then follows up with orientation, and also provides new staff with a copy of the Premier's office record schedule. I'm providing this committee with a draft copy of the offer letter.

I'm happy to answer any questions. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Marangoni, for your introductory remarks and your precision timing.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, and thank you, Ms. Marangoni, for being here.

Ms. Emily Marangoni: It's my pleasure.

Mr. Victor Fedeli: Peter Wallace, the secretary of cabinet, testified that you personally ordered the deletion of at least two email accounts. Whose email accounts were those?

Ms. Emily Marangoni: I would have gone through an entire list of email accounts, and I would have directed IT in Cabinet Office to make sure that they removed any of the ones—that staff no longer here would not be active.

Mr. Victor Fedeli: So who are the names of the accounts that you ordered?

Ms. Emily Marangoni: There were a number of them at the time. Three of the ones that would have been at that time are the three that I said in my statement, which were Chris Morley, Jamison Steeve and Sean Mullin.

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Mr. Victor Fedeli: And do you know the dates that you ordered those emails to be destroyed?

Ms. Emily Marangoni: Off the top of my head, I don't remember the exact date.

Mr. Victor Fedeli: If I suggested August 17 for Jamison Steeve and Sean Mullin, would that help?

Ms. Emily Marangoni: August 17?

Mr. Victor Fedeli: If I suggested June 21 for Chris Morley, would that help?

Ms. Emily Marangoni: It's very possible. That would have been at a time that I would have requested it, yes.

Mr. Victor Fedeli: Those are in Jamie Forrest's affidavit. She says June 21, 2012, for Chris Morley.

So you were the one, then, according to Mr. Wallace, who ordered that?

Ms. Emily Marangoni: As I said in my opening statement, it's a process that I would follow whenever I would find out that there were some issues around active accounts.

Mr. Victor Fedeli: You used the word "purged."

Ms. Emily Marangoni: Yes.

Mr. Victor Fedeli: That's the first time we've heard that here. We generally hear "deletion" and then "destruction." Those are words used by the privacy commissioner. Does purging also include the destruction of the backup tapes?

Ms. Emily Marangoni: I don't know about backup tapes. The way I've always understood it, the way it was explained to me—and I'm no IT expert; as a matter of fact, I'm still trying to understand sometimes what they're saying—I was always told that any emails we had were on a backup tape. How long they stay there, I couldn't tell you. But I was always under the impression that if something happened to our email accounts, they could be retrieved through this other system. It was the first I heard, and it was only through here that I heard, that they don't exist, which I find oddly confusing because I've always worked under that assumption: that if anyone were to lose their emails—and that could happen when you're dealing with computers—there was

a place where I could go and get help to retrieve those emails.

Mr. Victor Fedeli: So when you ordered the purging of Morley, Steeve and Mullin emails, you asked that they be deleted and destroyed. Did you ask for the backup—

Ms. Emily Marangoni: No. I did not ask that they be deleted or destroyed. I asked that they be purged.

Mr. Victor Fedeli: Did you order the backup tapes be destroyed?

Ms. Emily Marangoni: No. I have no access to back-up tapes.

Mr. Victor Fedeli: Do you know who did?

Ms. Emily Marangoni: I have no idea.

Mr. Victor Fedeli: Okay. Let me just read the transcript—the discussion between our member John Yakabuski and Mr. Peter Wallace. He had said that Morley, Mullin and Steeve have their accounts disabled, and he said, "Those accounts were deleted."

Yakabuski: "Deleted?"

Wallace: "At the instruction of the Office of the Premier in August or thereabouts of 2012. The accounts of those—"

Interrupted by Yakabuski: "So by David Livingston? Who gave the order?"

Wallace: "In those particular instances, in at least two of those instances—I'm not sure about all of them—the orders were provided by Mr. Livingston's administrative assistant."

Yakabuski: "And who was that?"

Wallace: "Emily Marangoni."

So is that an accurate reflection of what occurred?

Ms. Emily Marangoni: What would have occurred is at the time that they would have left, I would have filled out what I said in my opening statement, which is the GPRF, the government retrieval form. On that form, it says to give a date when they can purge those accounts. I normally will put the date that the person has left. Then, every so often, we would go through the lists of active accounts and I would ask that they be purged. I have never asked that any accounts be deleted or destroyed. I've only ever asked that they be purged.

Mr. Victor Fedeli: So in reading the letter from the cabinet office—Jamie Forrest, coordinator, freedom of information and issues—it says here, "Emily Marangoni formerly held the position of EA to Chris Morley"—the man we just heard from before you. "Since she is now the director of human resources in the PO, she was inadvertently overlooked in the initial search request. Emily has now completed a search for records, in the manner described above, and found no records that respond to the request."

So this was for Project Vapour freedom of information. You have no emails of your own?

Ms. Emily Marangoni: I would not have been privy to any of those emails. But if I may explain—

Mr. Victor Fedeli: None whatsoever? You have no Project Vapour emails?

Ms. Emily Marangoni: I don't have any emails regarding Project Vapour. It wouldn't have been something that I would have been privy to.

Mr. Victor Fedeli: Okay. A little later it says, "Records of former PO staff and deleted emails." We're trying to get to the reason, of course, why there were—I guess the words are no responses on Project Vapour from the Premier's office. It says here, "Mr. Morley no longer works in the PO. His email account was deleted on June 21, 2012. Mr. Morley's email account cannot be restored from a backup tape."

So you have no idea how the backup tape has been destroyed.

Ms. Emily Marangoni: I would only have asked that they purge his active email. I have no control over what happens to the backup tapes. As I said before, I was under the impression that those backup tapes would always be available if something happened and we needed to go and restore emails.

Mr. Victor Fedeli: Are you suggesting, then, that it would take an extraordinary effort to have deleted that backup tape in addition to—

Ms. Emily Marangoni: Honestly, I can't answer that question. That's way over what I know about IT.

Mr. Victor Fedeli: But you would have always thought you can retrieve the backup tape.

Ms. Emily Marangoni: I was always under the impression, from my discussions with our IT folks, that there is backup happening, and that even if we delete an email, there is somewhere you can retrieve that email as long as it wasn't deleted within 24 hours of receiving it.

Mr. Victor Fedeli: Ms. Forrest further advised that the email account of Christopher Morley, the Premier's chief of staff, was deleted on or about June 21, which was prior to the date of the appellant's request. Mr. David Livingston assumed the position of chief of staff upon Mr. Morley's departure. Mr. Livingston confirmed that he conducted a search and located no records responsive to the appellant's access request.

Would it be normal practice for one chief of staff to leave and not transfer any records at all to the incoming chief of staff?

Ms. Emily Marangoni: When it came to emails, I did transition three chiefs, even the one before Chris Morley, and it wasn't customary to—they would be talking to each other, and any physical documents, perhaps, would have been forwarded, but I don't recall emails being transferred.

Mr. Victor Fedeli: I asked you about those three, and you said there were other emails. How many deleted or disabled accounts are you aware of?

Ms. Emily Marangoni: Any of the staff of the Premier's office who have left in the last six and a half years would have been purged. Off the top of my head, I couldn't tell you what the numbers were, but there would have been more than just those three when we would go through the list.

Mr. Victor Fedeli: Who asked you to purge those files?

Ms. Emily Marangoni: Nobody asked me. It's part of the process I've been following for the past six and a half years. I follow the checklist that I'm provided from Cabinet Office, and that's how I go through and take care of when a staff member leaves. My primary job is to collect all the government property they have—and one of the things on the list is the purging of email accounts.

Mr. Victor Fedeli: So you did this based on a cabinet directive from six and a half years ago, or a standard—

Ms. Emily Marangoni: I do have copies. It's a form that I understand Cabinet Office also uses. Basically, it's a checklist. I believe ministries also use a GPRF. They've got their own version of how they collect the equipment. But that's the one I've had, and that's the one I've been using since I came.

Mr. Victor Fedeli: When the call for Project Vapour FOI documents—you're saying you have no documents with Project Vapour on them whatsoever?

Ms. Emily Marangoni: I don't recall ever receiving anything with that name in an email or any other document. I would not have been privy to those types of discussions. I did not do policy, as EA to the chief. I was more like the air traffic control, where somebody would send me or call or—whether it was correspondence or whatever, I would make sure to send it off where it needed to be, and then, in my view, my job was done.

Mr. Victor Fedeli: Do you know what Project Vapour is?

Ms. Emily Marangoni: I do now, from the media. It was a code word, but I couldn't say I would have known at the time. That was not a part of what I did.

Mr. Victor Fedeli: When do you think you first acknowledged or understood what Project Vapour is?

Ms. Emily Marangoni: For one, it was one of the FOI requests—that was one of the times I heard about it. It was only in the last little while that I've heard about it. I've been reading about it in the media.

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Mr. Victor Fedeli: Like when?

Ms. Emily Marangoni: The last few months—

Mr. Victor Fedeli: In 2013?

Ms. Emily Marangoni: Yes, I would say in the last few months.

Mr. Victor Fedeli: Did you ever receive any specific instructions from David Livingston on the purging or deletion of emails?

Ms. Emily Marangoni: No, that was not a discussion David and I ever had. If I may, also, when David came on board, I transitioned him and then I moved down to the second floor. What I did when staff exited was just an ongoing process that I followed, and it wasn't discussions we had. The only time I would have gone to the chief of staff about an issue was if there was an issue that I could not deal with myself, and then I would bring the chief of staff in—but this was part of an administrative process.

Mr. Victor Fedeli: So they never asked you, a couple of years ago, to delete anything to do with Project Vapour?

Ms. Emily Marangoni: No.

Mr. Victor Fedeli: You don't know anything about Project Vapour?

Ms. Emily Marangoni: I honestly do not know anything about Project Vapour.

Mr. Victor Fedeli: Go to document 5 in the handout that we gave you. It's the second-last page. You'll see that it's August 4, 2011. It's a couple of years old now. Do you see that email?

Ms. Emily Marangoni: Is this—

Mr. Victor Fedeli: From Murray Segal. The second-last document; PC doc 5; the second-last sheet of paper. Do you have that one? It's the second-last sheet of paper in all of the documents. Do you see it there?

Ms. Emily Marangoni: Yes.

Mr. Victor Fedeli: Can you just read me the subject line, please?

Ms. Emily Marangoni: Is it the email to Chris Morley? Is that the one—

Mr. Victor Fedeli: Yes.

Ms. Emily Marangoni: Daniel Cayley—the email?

Mr. Victor Fedeli: It's from Murray Segal.

Ms. Emily Marangoni: From Murray Segal.

Mr. Victor Fedeli: Can you read me the subject line?

Ms. Emily Marangoni: It's "8:30 a.m. call on Vapour."

Mr. Victor Fedeli: You're copied on that?

Ms. Emily Marangoni: I was cc'd.

Mr. Victor Fedeli: Okay. Go to the next page, then, and it talks about a teleconference on Vapour, I believe, back on August 5, 2011.

Ms. Emily Marangoni: Yes.

Mr. Victor Fedeli: Optional attendees: Your name is there.

Ms. Emily Marangoni: Yes.

Mr. Victor Fedeli: So—

Ms. Emily Marangoni: But these—I mean, I—

Mr. Victor Fedeli: Were you not involved in Project Vapour?

Ms. Emily Marangoni: I was not involved. I mean, I would have been—

Mr. Victor Fedeli: But you do have Project Vapour email here now.

Ms. Emily Marangoni: Yes, and I apologize. I don't remember this.

Mr. Victor Fedeli: Are these the only emails that would have your name attached to Project Vapour?

Ms. Emily Marangoni: I would believe so. Honestly, you know what? I don't know. If there were meetings going on, I was the EA to the chief, and I would have been included in the invites.

Mr. Victor Fedeli: So you did have email with Project Vapour on it, then. Did you wonder, when you got an email on an 8:30 call on Project Vapour, what "Project Vapour" meant? Would you have—

Ms. Emily Marangoni: Well, I mean—

Mr. Victor Fedeli: Go ahead.

Ms. Emily Marangoni: Honestly, I don't remember. I mean—

Mr. Victor Fedeli: So, two years ago, there's an email inviting you to a conference call on Project Vapour, and you did not ask anybody, "What does 'Project Vapour' mean?"

Ms. Emily Marangoni: Inviting me? Are we talking about these two emails?

Mr. Victor Fedeli: Yes, teleconference, optional attendees—

Ms. Emily Marangoni: I was not invited to attend. I was an optional—

Mr. Victor Fedeli: Yes, I understand. You were invited as an optional.

Ms. Emily Marangoni: It wasn't me who was invited to attend.

Mr. Victor Fedeli: Did you get the email?

Ms. Emily Marangoni: No.

Mr. Victor Fedeli: You didn't receive this email?

Ms. Emily Marangoni: No, no. Obviously, I did; I'm on it. But I don't—

Mr. Victor Fedeli: Yes, so you did receive this email.

Ms. Emily Marangoni: It's possible—it would have been one of the ones that I knew Chris was invited, and that would have been the end of my part with it.

Mr. Victor Fedeli: So you knew Chris was invited to a meeting to discuss Project Vapour. Can you tell me, at the time, then, did you actually know what Project Vapour was two years ago—

Ms. Emily Marangoni: No, I—

Mr. Victor Fedeli: —or are you sticking with your story that you just learned of Project Vapour in the media in the last few months?

Ms. Emily Marangoni: I didn't know. My apologies; I mean, I don't remember seeing these emails back then.

Mr. Victor Fedeli: When you saw an email two years ago that said "Project Vapour," you would have just deleted it? You would have asked somebody, "What does 'Project Vapour' mean? Why am I included on this list? What does that mean?" You didn't do anything about it?

Ms. Emily Marangoni: Well, it wasn't unusual to be cc'd on emails that were going to my chief of staff. But I wasn't—

Mr. Victor Fedeli: Yes, but it would be unusual not to ask about this unusual word "Vapour."

Ms. Emily Marangoni: Well, not necessarily. I mean, honestly, I don't remember. It's a long time ago.

Mr. Victor Fedeli: So when you were asked to turn over all emails that had to do with Project Vapour, were these emails turned over to the FOI request?

Ms. Emily Marangoni: I didn't have them at the time that the request came.

Mr. Victor Fedeli: You didn't have them?

Ms. Emily Marangoni: I did not. If I may explain, when I moved from the sixth floor to the second floor, I was no longer under the same IT service, and I—

Mr. Victor Fedeli: Explain that a little bit further. This is interesting.

Ms. Emily Marangoni: About my emails?

Mr. Victor Fedeli: Yes.

Ms. Emily Marangoni: I moved from the sixth floor—I was under cabinet office IT; I am now under MGS IT. For some reason, when I moved from the sixth floor to the second, I lost a lot of my emails. It also happened again yesterday—

Mr. Victor Fedeli: Hang on. You lost a lot of your emails. Do you know when that occurred?

Ms. Emily Marangoni: When I moved down in August, last year.

Mr. Victor Fedeli: What was the date of that, please?

Ms. Emily Marangoni: The transfer would have been August 28. It happened again yesterday. I lost more emails yesterday, and I've got proof. I'm asking them to come and look into it for me.

Mr. Victor Fedeli: So you lost your emails yesterday as well.

Ms. Emily Marangoni: There are a number of days that are missing from my inbox. I'm trying to find out what has happened.

Mr. Victor Fedeli: Did you move again yesterday? Nothing happened yesterday—

Ms. Emily Marangoni: No, it was a normal day. I was looking through some emails, and something funny happened. I got an email that I had sent out in August, and then I went down to see the rest of my emails, and those emails are missing. I've got IT coming this afternoon to look and see whether I can retrieve them.

Mr. Victor Fedeli: This gets curiously and curiously.

You had mentioned that Premier Wynne has new rules put in place for emails. Does one of the new rules include staff using Gmail accounts to get around freedom of information?

Ms. Emily Marangoni: That wouldn't be one of the things I'm talking about.

Mr. Victor Fedeli: Is that a new policy within the government: to revert to Gmail accounts so we can't have access through freedom of information?

Ms. Emily Marangoni: I believe, sir, that you're talking about some Gmail accounts that were used, prominently, probably, through transition.

Mr. Victor Fedeli: No, I'm talking about ones that we have that were used quite recently.

Ms. Emily Marangoni: Quite frankly, we can't control who emails us on what email account. Inadvertently, sometimes we might respond from a Gmail account, but—

Mr. Victor Fedeli: You think those Gmails are inadvertent? So if I brought 200 documents that were staff to staff, using Gmail, that would be inadvertent?

Ms. Emily Marangoni: Well, I don't use mine, so I'm not sure who you're talking about. I know that, through transition, I have—I was asked for an FOI request yesterday, and I pulled one document that was on a Gmail account, and it was during transition.

Mr. Victor Fedeli: I'm not talking about that. I'm talking about as recently as only a couple of weeks ago. I think transition has long been over.

Ms. Emily Marangoni: Normally, when I deal with staff, I do tell them that they should be using their gov-

ernment account for government business and personal accounts for personal business. I can't answer on what other staff—

Mr. Victor Fedeli: You mentioned in your opening statement that equipment is turned back over to the government. Where is that equipment, then, from Morley, Steve, Mullin?

Ms. Emily Marangoni: It gets sent back with the government retrieval form. It gets sent back to Cabinet Office HR. It goes through the different processes, where they tick off that it has been received—

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Emily Marangoni: —and then I would refurbish it and give it to a new staff member.

Mr. Victor Fedeli: Who, then, transferred the data from those electronic devices?

Ms. Emily Marangoni: That would be done through IT. I just hand it over, and I don't see it again until I request a certain number.

Mr. Victor Fedeli: And the devices are returned to you, ready for use—

Ms. Emily Marangoni: No. It's returned to the system.

Mr. Victor Fedeli: And you feel perfectly comfortable with ordering the purging, or as we call it, the deletion and destruction? You're comfortable with that—

Ms. Emily Marangoni: I am. It was part of the process I was following—

Mr. Victor Fedeli: —but not comfortable hearing that the backup tapes are destroyed.

Ms. Emily Marangoni: I'm not comfortable about that. I honestly thought that there were backup tapes.

If I may, what I have—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Monsieur Bisson.

Mr. Gilles Bisson: Just following up on that very quickly: This is, I take it, an Outlook request for meeting dated May 8, 2011, and it's clear that you were part of a group of people who were required—not required, but in your case, an optional attendee to this particular meeting about Vapour. Let me ask you this: At least in one document, we know that in fact you were invited to a meeting to talk about Vapour. If you showed up or not—you're saying you didn't. Were there any other such occasions where you were invited to meetings about Vapour, or is this the only one?

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Ms. Emily Marangoni: Well, Mr. Bisson, as the EA to the chief of staff, normally I was also doing his schedule, so I would have been cc'd, just so that I knew he needed to be at a certain meeting.

Mr. Gilles Bisson: But here you're an optional attendee. Did you ever—

Ms. Emily Marangoni: Well, the “optional attendee” would be basically just to make me aware that my chief had to be at a meeting.

Mr. Gilles Bisson: I didn't finish the question.

Ms. Emily Marangoni: Sorry, sir.

Mr. Gilles Bisson: Were you ever invited? First of all, were you invited to other meetings around Vapour?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: Did you ever—

Ms. Emily Marangoni: I did not attend meetings—

Mr. Gilles Bisson: Well, that was the second question.

Ms. Emily Marangoni: Sorry.

Mr. Gilles Bisson: Did you ever attend any meetings in regard to Vapour or any of the gas plants?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: And did you have any documentation in your possession in regard to any of the gas plant issues?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: You realize you're under oath.

Ms. Emily Marangoni: I am. I understand.

Mr. Gilles Bisson: And you realize, if it's opposite, you can be found perjuring yourself, if that's not the case.

Ms. Emily Marangoni: Yes. Honestly, I don't have any records.

Mr. Gilles Bisson: Okay, fair enough, as long as you know what the rules are.

Peter Wallace, the secretary of cabinet, discussed how the OPS was given instruction to destroy the email accounts of Jamison Steeve, Sean Mullin and Chris Morley. This is what Mr. Peter Wallace said: "In those particular instances, in at least two of those instances—I'm not sure about all of them—the orders were provided by Mr. Livingston's ... assistant." Is that true?

Ms. Emily Marangoni: I would have asked that they purge the accounts, as would have been stated in our government recovery—

Mr. Gilles Bisson: Did Mr. Livingston specifically instruct you to do so?

Ms. Emily Marangoni: No, sir, he did not.

Mr. Gilles Bisson: Did not. So you just did that as part of your regular job?

Ms. Emily Marangoni: It was part of my regular duties.

Mr. Gilles Bisson: Why did you think that David Livingston thought email should be destroyed rather than archived?

Ms. Emily Marangoni: You would need to ask him. I don't know why he would think that.

Mr. Gilles Bisson: Did it ever occur to you that some of this should have been archived and not deleted?

Ms. Emily Marangoni: Now I know. I mean, when you first start—I mean, I was never told about the archiving of files. I just took a common-sense—if it was something I created, I would hang on to it. Most of what I did, as I said, was more like—I was basically your traffic control, where I would send things to the appropriate people, always under the impression that any of the documents that I did print would go to the chief of staff, and then the original that I had been emailed would have been with the person who sent it to me, and they were in charge of archiving it.

Mr. Gilles Bisson: Did people keep records other than emails, in regard to gas plants or other issues, in the Premier's office?

Ms. Emily Marangoni: I would imagine so. I don't track people's emails.

Mr. Gilles Bisson: Okay, but clear that staff such as Chris Morley and others would have had emails and/or documents and/or notes about these particular files.

Ms. Emily Marangoni: Well, you would need to ask them. I didn't keep track of what they kept or didn't keep. My job—and what I'm trying to explain here today—is basically the process I followed when a person left.

Mr. Gilles Bisson: Okay, let me try the question again: Did people in the Premier's office keep documents related to the files they were working on?

Ms. Emily Marangoni: As far as I understand it, they did, yes.

Mr. Gilles Bisson: Okay, good. And when these people left the office, did you purge all of those documents as well?

Ms. Emily Marangoni: I'm sorry?

Mr. Gilles Bisson: Documents other than emails: Were they purged when people left? Was that the practice of the Premier's office?

Ms. Emily Marangoni: The practice is what it says in the GPRF: that when a staff member leaves, their email accounts get purged.

Mr. Gilles Bisson: I'm not talking about emails. I'm talking about notes; I'm talking about documents or daybooks. Is it the practice of the Premier's office—

Ms. Emily Marangoni: I would not be privy to that. I mean, I wouldn't know. I only took care of the stuff that I needed to retrieve.

Mr. Gilles Bisson: So if you were leaving the Premier's office tomorrow morning, would you leave some documents in the Premier's office for the person taking over your job?

Ms. Emily Marangoni: I've got a lot of stuff, but what I do now is very different.

Mr. Gilles Bisson: But, it's fair to presume, so would other people. They have documents; they have notes.

Ms. Emily Marangoni: Well, yes, I would presume that they would have left, whether it was another person that was coming in to take—they would have forwarded any documents they were working with.

Mr. Gilles Bisson: You worked for Chris Morley and you knew that he had correspondence on the gas plants; that we've established. Did you think it was strange that shortly after the estimates committee started asking for gas plant documents, Chris's emails were destroyed? Did you think it was kind of strange?

Ms. Emily Marangoni: Well, Mr. Morley's emails were not destroyed.

Mr. Gilles Bisson: They were purged.

Ms. Emily Marangoni: They were purged using a process. If there had been any kind of request from the Premier's office, they would not have been purged.

Mr. Gilles Bisson: Say that again?

Ms. Emily Marangoni: At the time that the emails were purged, there were no requests from the Premier's office to present documents from their emails. They would not have been purged if there had been.

Mr. Gilles Bisson: So you purged those documents in July sometime.

Ms. Emily Marangoni: Yes.

Mr. Gilles Bisson: That request was in May, was it not, Chair, from the estimates committee? Can somebody give me that answer?

Mr. Peter Sibenik: It is May—May 16.

Mr. Gilles Bisson: So in the month of May, there was a request by estimates committee to get documents—

Mr. Bob Delaney: I don't mean to interrupt Mr. Bisson, but just on a point of privilege: The original request by the estimates committee, sir, was for documents from the Minister of Energy, the Ministry of Energy—

Mr. Gilles Bisson: I know what they were. Let me—

Mr. Bob Delaney: —and the OPA, but not the Premier's office.

The Chair (Mr. Shafiq Qaadri): Continue your questioning, Mr. Bisson.

Mr. Gilles Bisson: All right. So back to the questioning: You would have known that there was a request by the estimates committee to request from the Ministry of Energy, as Mr. Delaney pointed out, documents related to the gas plants. Did you think it was strange that you were deleting documents that could have been related to that when you did the deletion in July?

Ms. Emily Marangoni: Mr. Bisson, I don't recall having a request of the Premier's office, and that would have been the only reason—

Mr. Gilles Bisson: I'm not saying there was a request of the Premier's office; that's not my point. My point was, there was a request by the estimates committee to the Ministry of Energy in order to get documents, and those documents were refused. Hence, after the May 16 request, you deleted the documents for Mr. Morley in the month of July. Did you think that was kind of odd, that there might have been something there that would have been relevant to the request by the committee? Because the chief of staff and the Premier must have been involved, knowing everything that goes on in government, that those requests were made by the estimates committee.

Ms. Emily Marangoni: Well, I wouldn't have known that the estimates committee had made that request, so I would have continued with the process that I had in place for staff exiting.

Mr. Gilles Bisson: Well, we just heard testimony from Mr. Morley that the Premier's office is obviously aware of everything that goes on in this building, including what goes on in committee, so I find it passing strange that Mr. Morley or others wouldn't have known there was a request. My question is this: At any time, were you party to or did you overhear a conversation or see documents flying across your desk or whatever that would have been related to the request for those documents?

Ms. Emily Marangoni: Not that I recall, no.

Mr. Gilles Bisson: Do you think—

Ms. Emily Marangoni: Listen, it's a long time ago. Something might have been handed to me to give to the chief, but I don't recall—

Mr. Gilles Bisson: Because somebody said no. Somebody refused to give those documents. Somebody made the decision not to release those documents to the estimates committee.

Ms. Emily Marangoni: Well, that wasn't me.

Mr. Gilles Bisson: Well, I'm not saying it was you. I think it's above your pay grade, so I'll give you that.

Ms. Emily Marangoni: Okay.

Mr. Gilles Bisson: My point is, there was a request by the estimates committee to get documents, and somebody within the government said no. I find it passing strange that the Premier's office would not have been aware of that. So my question is: Do you know if the Premier's office was aware of any decision around the release of those documents?

Ms. Emily Marangoni: Well, I wouldn't know. I mean, that's not something I would have known, or I can't honestly answer that I did or didn't, so I honestly don't know.

Mr. Gilles Bisson: How many emails did you instruct the OPS to destroy? How many do you think there were?

Ms. Emily Marangoni: I didn't ask the OPS to destroy anything.

Mr. Gilles Bisson: Well, you purged—

Ms. Emily Marangoni: I asked that the process be followed that's on the government form that's given to me.

Mr. Gilles Bisson: You ask that the documents be purged. What is the net result of purging?

Ms. Emily Marangoni: The account gets deleted.

Mr. Gilles Bisson: Which means to say, what happens to the data in that account?

Ms. Emily Marangoni: But I was also under the impression that that data was being stored somewhere else. I was following a process, Mr. Bisson, that has been followed for a long time.

Mr. Gilles Bisson: Back to the question: When you purged the documents—which, essentially, is getting rid of the documents from those particular accounts—do you have any idea how many emails were in each of those accounts?

Ms. Emily Marangoni: I don't know. I don't go and look through emails. I would just put the date of the person's departure.

Mr. Gilles Bisson: When people leave the Premier's office, are they asked to archive important information before they walk out the door?

Ms. Emily Marangoni: That was not a question I was ever asked to bring forward, so I never did ask staff, but, as I said in my opening statement, now we are making staff aware at the very beginning, when they come on board, what we need to do on a day-to-day basis.

Mr. Gilles Bisson: But at the time, when people left the Premier's office, were you asking them to make sure to preserve important documents so that—

Ms. Emily Marangoni: I was not, sir. I was just following the standard procedures that I had been—

Mr. Gilles Bisson: So let me see if I get this right. I could be a key staffer in the Premier's office at the time, be involved in some very important file, whatever it might be, and nobody would ask me to preserve the documents?

Ms. Emily Marangoni: Well, that wouldn't have been part—my duty was to collect government property, and that's what I was doing.

Mr. Gilles Bisson: But you would know what the process is within the Premier's office when it comes to documents. So other than emails—I'm not even talking emails here; I'm talking about documents that are in their possession—isn't there some policy at the time to deal with how you preserve those documents in the event that somebody leaves?

Ms. Emily Marangoni: That wouldn't have been something I would have taken care of.

Mr. Gilles Bisson: You've seen plenty of people come and go in the Premier's office. There must be a mechanism by which to protect some of those documents, no?

Ms. Emily Marangoni: But, as I said, I was only responsible for making sure they left their government property behind, which was their BlackBerrys and cell-phones and whatever else they had that was government property. That was all I was responsible for doing.

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Mr. Gilles Bisson: Did anybody have a policy about documents in the Premier's office—when they left? Was there a policy to preserve documents? Yes or no?

Ms. Emily Marangoni: I would imagine there was. I would imagine that if somebody was working on something, they would be passing it on to whoever came in.

Mr. Gilles Bisson: Did people use daybooks in their day-to-day work there, as far as going into meetings, taking notes and all that kind of stuff?

Ms. Emily Marangoni: I used one because of the job I'm doing; I'm writing stuff down.

Mr. Gilles Bisson: And most people would do the same, I would think.

Ms. Emily Marangoni: I would think that some people would do that.

Mr. Gilles Bisson: What happens to those when people leave?

Ms. Emily Marangoni: I couldn't tell you that. I know where mine are. They're in my office.

Mr. Gilles Bisson: If you were to leave, where would they go?

Ms. Emily Marangoni: I would make sure to hand them over.

Mr. Gilles Bisson: Normally, they would be handed over. Okay.

How could the government maintain a record of its decisions if email accounts were simply destroyed? I guess it goes to the crux of this. If you're purging email records, which is a large part of the way we communicate these days, considering that we use emails more now

than we ever did before, how can you just purge something without thinking, "Well, maybe some of this stuff has got to be saved in some way"?

Ms. Emily Marangoni: The way I looked at it, any decision-making would have been done—it would have been going back and forth. If it was in a ministry, the ministry would have the document. I always looked at it that way. Wherever it originated is where the document would be archived, would be my take on it. For any decisions that were being made, it would be the revised document that would have that new decision on it.

Mr. Gilles Bisson: It's pretty clear from what you're saying that there was a culture of purging. Essentially, the process was to purge emails when people left the Premier's office.

Ms. Emily Marangoni: It wasn't a culture; it was a process that was put in place—

Mr. Gilles Bisson: I change my word from "culture" to "process," all right?

Ms. Emily Marangoni: I was given a form, and I was following this form. It was a checklist. It wasn't something I put together. It was something that I got from Cabinet Office to help me get equipment back.

Mr. Gilles Bisson: Did people on the way out export the emails and say, "Here's a USB" or some storage device by which their emails were saved for future reference?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: Nobody ever did that?

Ms. Emily Marangoni: No. If I may elaborate, the only time a USB would be used is if a staff member wanted to take their contacts, but that would be done through IT. They would download the contacts that they would have had in their BlackBerrys, of people they had been dealing with. That's the only time I ever recall a USB stick being used.

Mr. Gilles Bisson: Did you wipe out hard drives when people left?

Ms. Emily Marangoni: No. I don't touch the computers when people leave.

Mr. Gilles Bisson: Did somebody go in and wipe out the hard drives?

Ms. Emily Marangoni: No, not that I'm aware of. That's not something I would have instructed people to do.

Mr. Gilles Bisson: So person X works in the Premier's office and they're leaving, and the process is you purge the emails. What do they do with all of the data that's on the hard drive? Certainly, there are documents that were saved and—

Ms. Emily Marangoni: The only thing that gets left on the desk of the staff member who's leaving would be their desktop. At that time, IT will go and do what their specialty is to get the computer ready for the next person. I don't touch that desktop.

Mr. Gilles Bisson: What happens to the content on the hard drive?

Ms. Emily Marangoni: I don't know. I honestly have never followed up on what happens with that.

Mr. Gilles Bisson: When you guys save documents within the Premier's office, is it strictly to the hard drive, or is it also to the network storage device?

Ms. Emily Marangoni: We had what was called the G:\ drive, and stuff would go into the G:\ drive.

Mr. Gilles Bisson: And that stuff would still be there.

Ms. Emily Marangoni: It should be there, yes.

Mr. Gilles Bisson: Have we requested the stuff from the G:\ drive? I'm just asking—

Interjection.

Mr. Gilles Bisson: No? Okay. So we're going to want a motion within about 15 minutes, Ramiro.

How much time do I have?

The Chair (Mr. Shafiq Qadri): Under five minutes.

Mr. Gilles Bisson: Okay. I find it passing strange that an office as important as the Premier's office—because it is the highest office in this province. Decisions are made there every day that could cost billions of dollars or could affect people's lives. I just have a hard time believing that, essentially, information that a staffer would have obtained as a result of doing his or her job—that we just sort of delete all that stuff. Don't you think that's kind of strange?

Ms. Emily Marangoni: Well, sir, my job was basically to make sure that those email accounts weren't still active, and I was following a process of—

Mr. Gilles Bisson: I'm just a little ol' MPP from northern Ontario, all right? So I don't pretend to be very cultured and understand this stuff greatly. But I've had different staff work for me over the years. Everything is saved to a system that's central, so that I can look at or my staff can look at anybody's file that we're working on, and that stuff is saved for posterity. It's saved in the system. I can go back 23 years and say, "Mr. So-and-so called on such-and-such a date, and that's who talked to them and that's what the conversation was about." All emails and documents are saved centrally.

So if a little ol' MPP in northern Ontario is doing that, why would the Premier of Ontario delete documents and delete emails that are probably more important than the documents and emails I've got? I'm having a hard time understanding that. What's the reason for that? Why would you have to purge the information?

Ms. Emily Marangoni: Well, as I said in my opening statement, it would only arise at a time when, if a staff member had left for a couple of years, they had come back. I mean—

Mr. Gilles Bisson: I understand that people come and go.

Ms. Emily Marangoni: I was following a process, Mr. Bisson.

Mr. Gilles Bisson: No, but my point is, I understand that people come and go. I get that. But it's the issue of the documents and information they had in their possession at the time that they worked in the office. If in MPPs' offices all of our information is stored centrally in one place so that we can always go back and look at it no matter what, why wouldn't you have a similar process for

the Premier's office, in which the issues they deal with are far weightier than the ones I do?

Didn't you think it's kind of strange that you're deleting documents and deleting emails that are related to files that people are working on? Just because somebody quits doesn't mean to say that the file dies as far as whatever they're working on.

Ms. Emily Marangoni: I would have imagined that the staff member would have brought the staff person working on it to date with what was going on. I don't know what would have been in those emails.

Mr. Gilles Bisson: Okay, so you're working on issue X in the Premier's office, whatever that issue is.

Ms. Emily Marangoni: Right.

Mr. Gilles Bisson: You're going to have documents that you're going to get in your possession, you're going to have handwritten notes and you're going to have emails. I find it hard to believe that all of that stuff is purged the minute the person walks out of the office, because the file is still active; issue X is still active. Just because you quit doesn't mean to say the issue dies. Somebody else is going to take over. They need access to that information to do their jobs. So I have a hard time believing that the Premier's office just deletes all that stuff. That would mean to say that the new person coming in would have to start from scratch. It's a pretty inefficient way of doing business, wouldn't you admit?

Ms. Emily Marangoni: I mean, you're talking about more than just emails. I was only responsible for making sure that the account of the person that's leaving—

Mr. Gilles Bisson: Well, certainly to God, if I saved every email to and from my staff related to files in my office, it's hard to believe that the Premier wasn't doing the same. I don't purge the emails from my staff when they leave; everything is saved centrally. Why wouldn't the Premier do the same?

Ms. Emily Marangoni: I—

Mr. Gilles Bisson: Anyway, off to the other guys.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Bisson.

To the government side: Madam Albanese.

Mrs. Laura Albanese: Well, thank you, Mr. Chair.

Thank you very much for being here today.

Ms. Emily Marangoni: Thank you.

Mrs. Laura Albanese: I don't have many questions for you this morning, but I just wanted to take this opportunity to clarify your role and responsibility.

As I understand it, you served as executive assistant to the chief of staff in the Premier's office from November 2006 to September 2012, and since then you have served as deputy director of human resources.

Ms. Emily Marangoni: Yes.

Mrs. Laura Albanese: Can you briefly explain your responsibilities in both roles?

Ms. Emily Marangoni: As EA to the chief of staff, my prime responsibility was basically, as I've said before, that I was sort of that air traffic control, where if somebody sent me communications or correspondence or something that belonged to someone in the Office of the

Premier, then I would just make sure to send it off to where it needed to go.

Mrs. Laura Albanese: And was that also a role that's a support to—I'm thinking of my staff, right?—a support of your boss, reminding him where he had to be at what time and what calls he had and—

Ms. Emily Marangoni: Yes. That would be part of my job. I would just make sure that whoever it was was on time for their meetings; I would keep them on track. But the primary job for me was basically taking care of reviewing expenses for the Premier's office staff. If there were issues with computers or—they would call me in and I would initiate—

Mrs. Laura Albanese: The process.

Ms. Emily Marangoni: —so it was basically the day-to-day operations of the office when it came to IT equipment.

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Mrs. Laura Albanese: I asked for both roles.

Ms. Emily Marangoni: The role now, which I started—actually my first day on the job was August 28, 2012—is basically now I take care of ordering all the contracts for any of the ministers' staff and Premier's office staff. So I start from the hiring. Basically, they come and sign their contract with me. That's one part that I do.

When I left the chief of staff's office, the GPRF form that we were taking care of upstairs—it never made sense to me to be handling it in the chief of staff's office. I always felt it should be in the HR department, where I would know that this person—I would be the first point of contact that a person is leaving, so I would know, "Here's what needs to be done." Upstairs, I was basically in control of just making sure I collect government recovery forms. That's basically, in a nutshell, what I do now, just help ministers' offices and the Premier's office hire staff.

Mrs. Laura Albanese: What about during the transition period? What were your responsibilities then?

Ms. Emily Marangoni: I did help set up the transition space during that time. I was in HR, so I was obviously getting ready to do the mass—once the swearing-in comes in, one of the processes would have been to do up paperwork putting all the previous Premier's office staff on notice. I was basically responsible for getting all that paperwork ready and, as well, helping Cabinet Office get the transition space that the new leader, soon to be Premier, would be using while they were here. That was up on the sixth floor. We made some space available to them.

If I may also say, at that time, after the 2011 election, there was a transition space put together, and when people walked in, there were BlackBerrys, laptops—everything was there. Then I was responsible for collecting all that equipment after the transition left. I had an awful time trying to collect from people who weren't staff to get our stuff back, who had been here to advise. So this time around, I made the request that any portable equipment be put in lockdown and only be given when

the transition team showed up that following Monday or whenever they came in after the leadership. That was basically what I was doing during that time. I've spent the last number of months staffing ministers' offices and the Premier's office again.

Mrs. Laura Albanese: I guess you could say that in both positions you held in government, you would have been responsible for overseeing the departure of former Premier's office staff, correct?

Ms. Emily Marangoni: Yes.

Mrs. Laura Albanese: Just so that we're all clear about what that entails, what happens when an employee of the Premier's office leaves government? What are the steps that you take?

Ms. Emily Marangoni: When I was upstairs, it could very easily happen where I would find out after the fact that a staff member had left. Somebody would show up with the equipment from the staff member and then I would quickly do up the GPRF form, so I was kind of backtracking in some instances. That was one of the reasons I brought it down with me, because I'm the one who would be doing the paperwork when a staff member leaves now, so I would know to get this process started at the same time.

We have made a few changes on how we get our equipment back. It's not a perfect process—we're still working on it—but I've been following the process that was given to me. Basically, now what happens is, the staff member is leaving, they come to sign their exit papers, and then we go through the list and they provide me with the keys to their office, their BlackBerry, cellphones, whatever they have that belongs to the government. They sign the form at the back and then I take the form, everything that they've provided me with, and I send the whole package upstairs to Cabinet Office HR, and then they distribute it.

Mrs. Laura Albanese: I believe you mentioned that you have tabled that form?

Ms. Emily Marangoni: I've got them here.

Mrs. Laura Albanese: Could we ask that those forms be distributed to the committee members, please?

The Chair (Mr. Shafiq Qaadri): You can certainly ask.

Mrs. Laura Albanese: Thank you. That concludes my questions.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney?

Mr. Bob Delaney: Thank you. I just have a few questions, Emily, while you're here. You talked about a lot of your job as air traffic control. Just to sort of pick up on your analogy, you didn't pilot the plane, you're not a passenger, you're not part of the baggage, you just route the traffic. Right?

Ms. Emily Marangoni: Exactly.

Mr. Bob Delaney: Thank you. Mr. Bisson's earlier question regarding either shared or network drives—when the committee requested the Premier's office records, and there were more than 30,000 produced, that request would have covered all such shared or network drives. Correct?

Ms. Emily Marangoni: I believe so, yes.

Mr. Bob Delaney: That's fine.

Ms. Emily Marangoni: At least, that's what we were asked to check.

Mr. Bob Delaney: Okay; that's fine. If they want to request it all over again, I just wanted to make sure that we got on the record that the odds are that you've already got the things that you had asked for.

You mentioned in your opening statement this process when staff leave government has changed. Could you remind us what those changes are?

Ms. Emily Marangoni: The change has been that I've taken the exit package now—that used to be controlled through the chief of staff's office—downstairs to HR with me, only because I felt that it was more of an HR issue as opposed to something that the chief of staff's office should do. That is something I've done.

The other thing is that once the request for information came out of the Premier's office, I have not asked for any emails to be purged. Any people who have exited since this FOI request came to us—they are sitting there waiting to be looked at if there are any more requests, until this matter is put to rest.

Mr. Bob Delaney: The process that you're discussing and the form that you've just provided to the committee: Do you know if it was used under the previous PC and NDP governments?

Ms. Emily Marangoni: My understanding is that there was a form used. I don't know if it was this exact form because, if you'll notice, this was revised in 2005. But my understanding is that there was a form used. It's been used throughout the years to recover government equipment.

Mr. Bob Delaney: Is the form used by our government stronger than the forms used in the past, to your knowledge?

Ms. Emily Marangoni: That I don't know.

Mr. Bob Delaney: Okay. When Secretary Wallace was here last week, he talked about the practice of purging accounts when a staff person leaves the government. I think we've been over this once or twice before, so let's just go over it one more time.

Ms. Emily Marangoni: Sure.

Mr. Bob Delaney: To use his words: "The wrapping up of email accounts would be a perfectly routine business. It's done in all businesses. There's no expectation in the archives act or anyplace else that records be kept forever in digital form, backed up in that approach. So it is routine that as individuals leave the Office of the Premier or any place ... within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down."

This purging of email accounts is standard practice government-wide—

Ms. Emily Marangoni: It's been standard practice since I arrived and, in my understanding, even before.

Mr. Bob Delaney: You said earlier that the actual act of performing operations on the recording media is done by IT staff; correct?

Ms. Emily Marangoni: Yes.

Mr. Bob Delaney: Are you ever asked to verify that records have either been retained or transformed or—

Ms. Emily Marangoni: No, I have never been asked.

Mr. Bob Delaney: All right. On the form it says, "Purge employee email account in H:\ drive files." Did you design the form?

Ms. Emily Marangoni: No. This is provided to me through Cabinet Office. What they do is they go through the form and they'll put Xs—there are some examples on this form of where they would say, "This is the property we need you to retrieve," and then on that portion there where it says upon—the purged employee, I would normally use the date the employee left. It doesn't necessarily happen that day, but that would be the date I would use.

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Mr. Bob Delaney: So the OPS asks you when records should be purged, not if.

Ms. Emily Marangoni: Yes.

Mr. Bob Delaney: All right. You were asked to attend here. You're not a decision-maker.

Ms. Emily Marangoni: No, I'm not.

Mr. Bob Delaney: You're someone who's an assistant. So in much the same way as with any of us, where our time is divided up into little slices, we depend on our staff to make sure we are where we're supposed to be, that we've got what we need. But our staff seldom, if ever, attend those meetings. When you worked with the chief of staff, your job was to make sure the chief of staff was where he needed to be, had the things that he needed and would be in the meeting, but you yourself weren't involved in the business of the meeting, correct?

Ms. Emily Marangoni: That is correct. I would just make sure he was on time and where he needed to be, and that was the end of my job when it came to his schedule.

Mr. Bob Delaney: If not for you and people like you, government would be in complete chaos.

Ms. Emily Marangoni: Thank you.

Mr. Bob Delaney: That's a roundabout way of saying thank you.

Following up on my question earlier about the practices of previous governments, would it be possible for you to undertake to get back to us on what their past practices were?

Ms. Emily Marangoni: I will do my best to do that for you.

Mr. Bob Delaney: Okay; I would like that. And if you could just follow up and just file—

Ms. Emily Marangoni: Just so I'm clear, you're looking for what other GPRF forms were in place before? Just so I know what I'm asking for.

Mr. Bob Delaney: Yes, and the process for recovering property—

Ms. Emily Marangoni: And process, okay.

Mr. Bob Delaney: And I accept the fact that in the early 1990s, the state of the art in IT was not what it is now.

Ms. Emily Marangoni: Exactly.

Mr. Bob Delaney: But I would like to find out just to keep the things that have been said in the committee in a little bit of perspective.

Ms. Emily Marangoni: Okay.

Mr. Bob Delaney: A few questions about record retention. The Archives and Recordkeeping Act as well as FIPPA are very clear that not all records are required to be kept. Among those that are not required to be kept and, as Mr. Morley said, can and must be destroyed are these transitory records. I would imagine that the bulk of the emails that are received on a daily basis would, in fact, be transitory.

Ms. Emily Marangoni: I would agree with that comment. A lot of what I was doing in my previous job, to me, was transitory because I was not the creator of the email. It was basically just advising me or asking to do something. Once I got the job done, I would delete that email.

In my current job, however, I have over 16,000 emails because I'm the initiator when I ask for a new contract. I'm the one who has all the information of what I'm asking for, so I can go back to those emails.

Mr. Bob Delaney: Transitory records, then, would include duplicates, records of short-term value—for example, somebody says, "Are you available for something or other next Tuesday," but by next Wednesday, that's redundant—intermediate records, draft documents. It's very clear that neither you nor staff are required to keep all records.

Ms. Emily Marangoni: That is correct.

Mr. Bob Delaney: It sort of suggests to me that if you were required to keep all records, the entire IT system would probably—

Ms. Emily Marangoni: Would have crashed by now.

Mr. Bob Delaney: —collapse under its own weight. Exactly. As well, there is, in fact, the cost of storage of all of this transitory information and outright effluvia that really has no ongoing historical or archival value.

Ms. Emily Marangoni: That would be correct.

Mr. Bob Delaney: Okay. How am I doing on time, Chair?

The Chair (Mr. Shafiq Qaadri): About four minutes.

Mr. Bob Delaney: Okay. Were you ever asked to delete specific records beyond your regular duties?

Ms. Emily Marangoni: No.

Mr. Bob Delaney: Did you ever feel you were asked to do something inappropriate in terms of deleting accounts?

Ms. Emily Marangoni: No.

Mr. Bob Delaney: One of the Information and Privacy Commissioner's key recommendations is that staff be provided with more training on records retention. Was there recently a mandatory all-staff meeting to outline all of these responsibilities?

Ms. Emily Marangoni: Yes, there was. If I may, it was also followed up with an email from the current chief of staff, sending a copy of the record retention of the forms for us to look at.

Mr. Bob Delaney: Okay. Would you have any other suggestions to offer us this morning?

Ms. Emily Marangoni: Well, there's always room for improvement on our government recovery list, and that's something that—any suggestions on how to improve this would be most welcome. We have started to make sure the staff are aware of record retention, so we do make sure to put it into their offer letter when we offer them a job within a ministry or the Premier's office. We are doing what we can to make sure that staff are made aware of it.

Previously, I took instruction from whatever sheet—I'm talking about the process of government retrieval. I basically used whatever the sheet told me to do. Any suggestions on how to make this better I will gladly take on and see if we can't have the form changed.

Mr. Bob Delaney: Chair, unless this witness has any further suggestions on the siting of gas plants, I think we're done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. I appreciate that.

On the recovery checklist, is there anywhere on there that talks about purging backup tapes?

Ms. Emily Marangoni: No.

Mr. Victor Fedeli: Is that why you're surprised that the backup tapes have been destroyed?

Ms. Emily Marangoni: Yes.

Mr. Victor Fedeli: And you have no information about the destruction of those backup tapes?

Ms. Emily Marangoni: Mr. Fedeli, I honestly—I don't know anything about the—I mean, I knew that there were backup tapes, that that's where stuff was being kept if something happened to our system and we needed help to retrieve what we had lost, and I was always under the assumption that that was there.

Mr. Victor Fedeli: I think you and everybody else was as well before they were destroyed.

Ms. Emily Marangoni: I wish I had known, but I didn't.

Mr. Victor Fedeli: I want to go back to those two documents about Project Vapour again, the second-last and the last page. You received an email that clearly has the word "Vapour" in it. You were asked, in the freedom of information, to turn over all of your records on Project Vapour.

Ms. Emily Marangoni: Yes.

Mr. Victor Fedeli: And the answer from you was, basically, "I don't have any documents." Yet from the Ministry of Energy, Mr. Daniel Cayley turned over his with your name on it, and from finance, Mr. Greg Orenszak turned over his email with your name on it. Where's your copy of these two emails?

Ms. Emily Marangoni: Well, it must have been deleted. I was not at these meetings.

Mr. Victor Fedeli: No, no, I understand.

Ms. Emily Marangoni: This would have been—I would have deleted them, obviously.

Mr. Victor Fedeli: You're still employed by the Liberal Party?

Ms. Emily Marangoni: I'm in the Premier's office, yes.

Mr. Victor Fedeli: And you're saying that you have deleted emails?

Ms. Emily Marangoni: I do not delete—in my current job, as I said previously, I've got over 16,000 emails. I don't delete, but that's because in the job I do now, I feel that I'm the one that's got the initial record, so I've been keeping them.

Mr. Victor Fedeli: In the discussion from the freedom-of-information request, it says to search your Outlook folder, including your inbox, your sent box, personal folders and deleted emails. Use the keyword—in this case it was "Project Vapour;" "Vapour" would have shown up. Why did these two emails that we received from the Ministry of Finance and the Ministry of Energy—why do we not have one from you?

Ms. Emily Marangoni: Because they must have been deleted at that time because this wouldn't have been something to do with me. It was a reminder for Chris Morley to be at the meeting, and I would have deleted this email.

Mr. Victor Fedeli: Do you remember this email now?

Ms. Emily Marangoni: You know what? I still honestly don't remember seeing it, but obviously my name is on it, so I did receive it.

Mr. Victor Fedeli: Okay. When it asks you to search your deleted box, why didn't you turn over the Project Vapour files that were in your deleted box?

Ms. Emily Marangoni: Because I was trying to explain before, when I moved downstairs, I did lose a lot of my emails at that time. The first email I had was at the end of August. Those have now disappeared from my computer yesterday.

Mr. Victor Fedeli: Which emails again?

Ms. Emily Marangoni: I only had emails—not necessarily pertaining to the gas plants, but I did have emails from August 27, 28, 29, 30 and 31. They're now all gone. I do have them in my "sent" file, so I know I had them there, but they're no longer in my inbox.

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Mr. Victor Fedeli: So this is August 4, 2011. They would have been in your "deleted" files. Why would the search—

Ms. Emily Marangoni: They would have been in my "deleted," but when I—

Mr. Victor Fedeli: Why would the search have not found these—

Ms. Emily Marangoni: Because when I moved from upstairs to downstairs, all my emails from when I was in the Premier's office, under Cabinet Office IT, disappeared from my inbox. I only had a certain number of emails, and it wasn't any pertaining to the FOI request.

Mr. Victor Fedeli: So if it wasn't for the people at finance and the people at energy that turned over your Project Vapour files, we would not have known that you were aware of Project Vapour.

Ms. Emily Marangoni: Yes.

Mr. Victor Fedeli: Okay.

So everybody knew that we're in the middle of a search for documents. September 24: we received 36,000 documents. September 25: Many of us, myself included, stood in the Legislature and said, "Hang on a second. There's not one email between the Premier's office and the Ministry of Energy," who were supposed to turn files over. In fact, there were no emails at the time, we found, even from the Minister of Energy's office. I mean, we have declared, right from the absolute first possible date, that we are missing emails, that there are holes in the emails that were turned over.

Everybody knew we're searching for missing documents, missing emails. It was in the news. It's a big deal. It has been a big deal for not only the nine months for this committee, but many months before—the estimates committee was looking for these missing emails.

Did it not concern you that you were hitting the delete button on emails that had to do with the Premier's office and gas plants when you deleted or purged Sean Mullin's, Jamison Steeve's and Chris Morley's emails? Did that not concern you?

Ms. Emily Marangoni: If I may explain, I did not personally delete the emails.

Mr. Victor Fedeli: You ordered the deletion.

Ms. Emily Marangoni: It was a form that I submitted with the date of when to purge. If there had been an FOI request on any of those emails, they would not have been purged.

Mr. Victor Fedeli: Okay, hang on a second. FOI requests—but we've got a request from this committee. You have, through a form, ordered the purging of files of Morley, Steeve and Mullin, three people obviously intimately involved not only in the negotiations with TransCanada, the Premier's office, the ministry office, but during the campaign. These are central people to the gas plants scandal. Yet you went ahead and decided, I understand, in Mullin's case, almost a year after he'd left, to delete his on the same day as Steeve's, and, a month later, Morley's. You had decided on your own to just tidy up and get rid of those emails?

Ms. Emily Marangoni: Well, as I said, I was following the process. We were going through emails that were still active, of people who had left. I was asking if they had been purged, as it said in the form.

Mr. Victor Fedeli: So why that day? When Mullin left in October 2011, he didn't get his email purged by you until August 17, 2012—

Ms. Emily Marangoni: His was a perfect example. He went back to school, and I didn't even know he had left until after he left. We quickly did the form and I sent it in.

I don't follow up with IT on a regular basis. I would only follow up if something happened that—

Mr. Victor Fedeli: So you decided, right in the middle of one of the biggest scandals in Ontario's history, to order the deletion—for three principal players in the

scandal, you just innocently ordered the destruction of their emails, right in the middle of this whole thing.

Ms. Emily Marangoni: It was the process I was following, yes.

Mr. Victor Fedeli: Were you ever asked by anybody in the Liberal Party about those deleted emails, ever?

Ms. Emily Marangoni: No.

Mr. Victor Fedeli: Nobody in your party cares whatsoever that you purged emails of three central witnesses? Nobody cares about that?

Ms. Emily Marangoni: I mean, Mr. Fedeli, I was following a process that, maybe in hindsight, if I had known that it was going to come to this, I wouldn't have asked them to. But at the time, I was doing what I was instructed to do on this form. If it had been an issue, they would not have been purged.

Mr. Victor Fedeli: Had it been an issue—it was in the papers almost non-stop.

Mr. Steven Del Duca: It wasn't at the time.

Ms. Emily Marangoni: No, not at the time that I asked for this to happen.

Mr. Victor Fedeli: I'll ask Mr. Leone: When was the date that the estimates committee first asked for records?

Mr. Rob Leone: May 16 was a motion, but we asked before that.

Mr. Victor Fedeli: May 16 of what year?

Mr. Rob Leone: Of 2012.

Mr. Victor Fedeli: May 16, 2012, was the first time records were asked for, and we have records destroyed August 17, 2012, and June 21, 2012. You've got an energy minister defying a committee. This is in the thick of it all. These are central people in the thick of this. All of a sudden, three central people's emails are purged, and you're telling us, "Oh, that was the day to purge emails. It was just a routine thing."

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Emily Marangoni: It was a routine thing on this form. There had not been any requests made of the Premier's office that I needed to make sure I did not ask for deletion of those email accounts.

Mr. Victor Fedeli: Let me just switch, then, to the transition from Dalton McGuinty to Kathleen Wynne. What records were transferred from Dalton McGuinty to Kathleen Wynne?

Ms. Emily Marangoni: I don't know. I was downstairs. All I took care of was making sure the transition space was ready for the new transition team, and I was taking care of the HR part by this time. I don't—

Mr. Victor Fedeli: These deleted and destroyed emails of Morley, Mullin and Steeve—did no one you worked for ever express concern that somebody likely broke the law?

Ms. Emily Marangoni: I was following a process, Mr. Fedeli.

Mr. Victor Fedeli: And the process included destroying the backup tapes?

Ms. Emily Marangoni: I did not destroy; I purged.

Le Président (M. Shafiq Qaadri): Merci, monsieur Fedeli. Je passe la parole à notre collègue monsieur Bisson.

Mr. Gilles Bisson: God help us in regard to your record-keeping, because I find it really odd that we're in a situation where the Premier's office has information in regard to particular files that are relevant, and just because somebody leaves, we delete them. I don't know. It just seems kind of silly.

You were saying earlier that if there was an FOI request, you would have never deleted those.

Ms. Emily Marangoni: What I meant was that if there had been an FOI request, usually when I'm having the conversation with the IT department in Cabinet Office, they make me aware of it—because I'm not always aware of what FOI requests are asked for. But if there was, they would tell me, and then we would leave it alone. I would not ask them to purge at that time. I would wait—

Mr. Gilles Bisson: But knowing that this was an issue of contention within the Legislature and with the media of Ontario, and documents were being sought by—not directly from the Premier's office at this point, but from the Minister of Energy, which the Premier's office was in communication with, isn't it passing strange that all of those things are deleted, that maybe later somebody is going to request them? It doesn't make any sense to me—other than trying to get rid of the evidence, essentially.

Ms. Emily Marangoni: I always thought that there was a backup system. I was just making sure that the email account of the person who left was not still active. That's what I thought this was doing.

Mr. Gilles Bisson: I'm not going to flog this horse anymore, other than to say that in most places, we keep records for a reason, and that is, if a staffer leaves, the person taking over the file has the information so they can read through it, understand what the issue is and carry on from wherever they're at. The fact that the Premier's office purges records as people are leaving the office—purges emails and God knows what else off the G drive—is troubling.

In regard to Mr. Morley, when you were Morley's EA, do you recall how often Morley spoke with representatives of TransCanada? Did he do that a lot?

Ms. Emily Marangoni: Not a lot. I believe that there might have been two instances, if I recall correctly.

Mr. Gilles Bisson: And do you know what that was?

Ms. Emily Marangoni: Honestly, I don't. I would only have taken that somebody would have called from there and—

Mr. Gilles Bisson: Were you a party to any discussions with either the Mississauga gas plant stuff or the Oakville one at any time?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: Did you and Chris Morley ever talk about TransCanada?

Ms. Emily Marangoni: No. I would have only told him that they had called for him, but I would never have—

Mr. Gilles Bisson: And in those calling for him, would they have said, “I’m calling because I want my money”?

Ms. Emily Marangoni: No. They would just say it was a phone call for Chris Morley.

Mr. Gilles Bisson: It just seems—

Ms. Emily Marangoni: “I want my money.”

Mr. Gilles Bisson: I’m sorry. They called up and said, “Hi. How are you doing today? I want to talk to Chris. What about—oh, never mind. Just tell him I want to talk to him.” It seems to me they must have told you something.

Ms. Emily Marangoni: I honestly don’t remember now, off the top of my head. I do remember that they would have called and would have asked for a phone call. I would have taken the message and the phone number, basically that they had called, and then I would ask Chris if he wanted to speak to them.

Mr. Gilles Bisson: I always remember Vander Zalm, when the woman kept on calling and saying, “Where’s my money? Where’s my money?” That’s what I was referring to. I always remember that one.

What was Chris Morley’s role in the settlement of the TransCanada issue?

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Ms. Emily Marangoni: He was chief of staff. As I said, I only made sure he was where he needed to be.

Mr. Gilles Bisson: He was in the thick of it, I take it?

Ms. Emily Marangoni: Well, he was a chief of staff, and I would imagine he would be invited to meetings.

Mr. Gilles Bisson: And he would talk to the Premier about these things, right?

Ms. Emily Marangoni: He did meet with the Premier on a weekly basis, but I don’t know if that was—I wasn’t privy to those conversations.

Mr. Gilles Bisson: But it’s fair to say, on things that Mr. Morley dealt with, he would have briefed the Premier in regard to what he was doing.

Ms. Emily Marangoni: I would have assumed so.

Mr. Gilles Bisson: Okay.

Ms. Emily Marangoni: But as I said, I was not there, so I can’t say, “Yes, that’s exactly what happened.”

Mr. Gilles Bisson: Did you ever have any conversation with the former Premier or the current Premier in regard to these issues?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: Never?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: I just remind you, you’re under oath.

Do you believe Dalton McGuinty was aware of everything that was going on with the gas plants?

Ms. Emily Marangoni: I don’t think that’s a fair question. I don’t know. I would imagine so.

Mr. Gilles Bisson: I would hope so.

Ms. Emily Marangoni: It’s not something he and I ever spoke about.

Mr. Gilles Bisson: But you don’t have a sense that the Premier was in the dark about this stuff.

Ms. Emily Marangoni: I would imagine he would have been briefed.

Mr. Gilles Bisson: He would have been briefed? Okay.

What was the role of Mr. Morley in the cancellation of the Oakville plant? Was it any different than that of the Mississauga plant?

Ms. Emily Marangoni: As I said, I was not privy to his meetings. I would only make sure that he went to the meetings he was supposed to be at. I don’t know how involved he would have been. That would have been a question you needed to ask him.

Mr. Gilles Bisson: You were saying you know of at least twice that TransCanada called—I take it other people called about the gas plants—that they would have been asking to speak to Mr. Morley?

Ms. Emily Marangoni: I wouldn’t have known exactly that was what they were calling about, but there were a lot of calls that would come through from various companies and people wanting to meet with him and speak to him.

Mr. Gilles Bisson: Did he return those calls?

Ms. Emily Marangoni: We did our best to try and return the calls, yes.

Mr. Gilles Bisson: Did people call back and say, “I’ve been trying to get my call and he’s not getting back to me”?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: None of that stuff?

Ms. Emily Marangoni: No.

Mr. Gilles Bisson: Okay. Were there any follow-up meetings that you’re aware of, in the Premier’s office, with Chris Morley and any of these individuals?

Ms. Emily Marangoni: As I said, I only recall two, but that doesn’t mean that there weren’t other meetings. The meetings might have been set up by someone else, not by me, so I wouldn’t have known. I only know for sure of those two; I don’t recall any others.

Mr. Gilles Bisson: Was it within the norm for the chief of staff to return these type of phone calls or normally was that bumped down to somebody else?

Ms. Emily Marangoni: There were times where, depending on what the issue might have been, I would have gone to a policy person to return the phone call. I didn’t always give Chris the messages that came through. I would always make sure somebody returned the phone call.

Mr. Gilles Bisson: So there had been some sort of protocol about—

Ms. Emily Marangoni: There would have been some, yes.

Mr. Gilles Bisson: “File X, this is Joe Schmo, or Jane Schmo, working the policy” —

Ms. Emily Marangoni: We got a lot of calls for various things, and I—

Mr. Gilles Bisson: You never returned mine.

Ms. Emily Marangoni: That's not true.

Mr. Gilles Bisson: I'm just joking. I was having fun. Normally, I just go and talk to them in the Legislature. It's a lot easier.

But the point is, is it normal for the chief of staff to deal with these type of issues? Did he deal with the more political ones, kind of thing?

Ms. Emily Marangoni: He would only get involved if it came to a point where he needed to be.

Mr. Gilles Bisson: Who else would have dealt with this particular issue?

Ms. Emily Marangoni: In most cases, I would imagine it would've been Jamison—the policy folks. A lot of the stuff that had to do with policy would've gone back to the policy folks. But I can only speak for what we did in our office.

You asked me if he got a lot of calls and I do recall, definitely, two calls from TransCanada that I did pass on to him. From what I know, he did deal with those two, himself.

Mr. Gilles Bisson: Okay, no further questions.

Ms. Emily Marangoni: Thank you.

The Chair (Mr. Shafiq Qaadri): Merci, Monsieur Bisson.

To the government side, Mr. Delaney: 10 minutes.

Mr. Bob Delaney: Well, thank you, Chair. There are a couple of points that I just want to make before I ask Ms. Marangoni my first question.

I'm just looking at the Information and Privacy Commissioner's special report dated June 5, and on page 18 it says, "With respect to the Premier's office, backup tapes are made each weekday evening and are maintained for only 10 days. At the end of the 10 days, the tapes are put into a pool of tapes to be overwritten."

And later on, it says that Ministry of Government Services "IT staff were able to confirm that there were no backup tapes containing emails ... during the relevant ... period—any tapes would have been overwritten as part of the usual backup system."

As well, when the original request was made by the estimates committee, a point that I brought out earlier, the estimates committee asked for relevant correspondence—not documents; relevant correspondence—and it asked for them from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority. At that time, in May 2012, there was no request at all for anything from the Office of the Premier.

Emily, you've talked a little bit about being cc'd on documents, one of which, I think, was referred to by the PCs in their document package. This seems to me to be a nearly perfect illustration of what a transitory record may be, which is something that talks about a meeting that you weren't a part of, as basically a reminder to your boss that there was to be a meeting at a certain time on a certain day. After that, it's a transitory record. Would I be correct?

Ms. Emily Marangoni: That would be my understanding.

Mr. Bob Delaney: Okay. So that may well be why it was deleted, then. Just for Mr. Leone's reference, that would be PC doc number 5.

On a day-to-day basis, you work for the Office of the Premier of Ontario, correct?

Ms. Emily Marangoni: Yes.

Mr. Bob Delaney: You don't work for the Ontario Liberal Party.

Ms. Emily Marangoni: That's correct.

Mr. Bob Delaney: So the questions that were earlier asked of you—"What direction did you get from the Ontario Liberal Party?"—you didn't get any direction from the Ontario Liberal Party.

Ms. Emily Marangoni: No.

Mr. Bob Delaney: Good. Excellent. Just for the committee, one more time, quickly encapsulate some of the changes in the processes that you follow in the Premier's office.

Ms. Emily Marangoni: I'm going to talk on the HR side now. When I deal with a new hire, a new staff member, we have the offer letter, which I've given everyone a copy of, and part of the Integrity Commissioner quote. We also now advise new staff of the Archives and Recordkeeping Act, and then it's followed up by the orientation that Cabinet Office HR does with the new staff, basically explaining what our duties are as Office of the Premier staff.

When it comes to the GPRF, the form is still the way it is. I don't make the changes on this form. I try to follow it as best I can, and there have been meetings with the current chief of staff. He has had meetings with all staff, basically to go over this recordkeeping process that's in place. Those are just a few of the things that we are now putting in place.

Mr. Bob Delaney: Emily, thank you for being a good and faithful administrative air traffic controller, and for coming in to see us today.

Ms. Emily Marangoni: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thanks to you, Ms. Marangoni, for your testimony and your presence here.

I believe we have some motions before the floor. Monsieur Bisson?

Mr. Gilles Bisson: Okay. I've got three motions, and I'm going to give copies to the Clerk, one at a time.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, we've received, I think, one motion that has to do with the—

Interjection.

The Chair (Mr. Shafiq Qaadri): Oh, sorry.

Mr. Victor Fedeli: That's mine.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli. Why don't we go ahead with his motion first?

Mr. Gilles Bisson: Yes. Can I give the Clerk these here?

The Chair (Mr. Shafiq Qaadri): We need to (a) receive them in writing and (b) approve them in order.

Mr. Gilles Bisson: Well, we're going to approve them as we go through this.

Mr. Victor Fedeli: Thank you, Chair. I move that the Standing Committee on Justice Policy request from the Premier's office, Ministry of Energy, Ministry of Finance, government House leader's office, Cabinet Office, Archives of Ontario and Secretary of Cabinet the production of all documents and correspondence from the email account "DJPM@liberal.ola.org" related to the cancellation and relocation of the power plants in Oakville and Mississauga from January 1, 2010, to June 18, 2013, including, but not limited to, documents containing any and all proxy names or code names such as, but not limited to, SWGTA, Project Vapour, Project Vapour-lock, Project Apple, Project Banana, Project Fruit Salad, and that the documents be provided in a searchable electronic PDF within two calendar weeks of the motion passing.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The motion is in order, as I understand it. Comments before we move to the vote? Mr. Delaney?

Mr. Bob Delaney: Chair, whose email account is this?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, would you care to answer that?

Mr. Victor Fedeli: It is the email account of Mr. Dalton McGuinty at liberal.ola.org.

Mr. Bob Delaney: Chair, are Citrix accounts within the purview of this committee to request?

The Chair (Mr. Shafiq Qaadri): An exceptionally interesting question. What do you mean by Citrix, for the Clerk and for legal counsel?

Mr. Bob Delaney: Your MPP accounts.

The Chair (Mr. Shafiq Qaadri): Peter, do you want to comment on that, on the record?

Mr. Peter Sibenik: Yes. The request is from the Premier's office, the Ministry of Energy, the Ministry of Finance, the government House leader's office etc., so it's documents within the production of those ministries

and organizations. Under standing order 110(b), the committee is able to request a wide variety of documents—a person's papers and things—and there is no obvious limit to the kinds of production that the committee can order. As long as the documents exist in the jurisdiction, in the province of Ontario, and they conform to the terms of reference that are before the committee, the committee can request the documents.

The Chair (Mr. Shafiq Qaadri): Thank you. Is that satisfactory to all concerned?

Mr. Bob Delaney: That's fine. That's all we wanted to know.

The Chair (Mr. Shafiq Qaadri): Seeing that, we'll move to the vote. Those in favour of the PC motion by Mr. Fedeli? All opposed? The motion carries.

Monsieur Bisson.

Mr. Gilles Bisson: I've just given the Clerk three.

Interjection.

Mr. Gilles Bisson: Let me walk through it. It's very simple. I'll just move the first one, and then we can have a discussion.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, I sense that my Clerk will require a recess to process this, so we're looking at a five- or 10-minute recess—preferably sharp, please.

The committee recessed from 1231 to 1257.

The Chair (Mr. Shafiq Qaadri): The committee is back in session, colleagues.

Monsieur Bisson, you have the floor.

Mr. Gilles Bisson: Just to be helpful, see you next week.

The Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. We appreciate the expeditious way in which you've dealt with the NDP motions.

The committee is adjourned, unless there's any further business. Thank you.

The committee adjourned at 1258.

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Deuxième session, 40^e législature

Official Report of Debates (Hansard)

Tuesday 25 June 2013



Journal des débats (Hansard)

Mardi 25 juin 2013

**Standing Committee on
Justice Policy**

Members' privileges

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 25 June 2013

Mardi 25 juin 2013

*The committee met at 1031 in room 151.*MEMBERS' PRIVILEGES
INFORMATION AND PRIVACY
COMMISSIONER OF ONTARIO

The Vice-Chair (Mrs. Laura Albanese): Good morning, everyone. I am the very temporary Chair. Our Chair, Mr. Shafiq Qaadri, is running late, so I'll be filling in for a few minutes until he arrives. Welcome to the Standing Committee on Justice Policy.

This morning our first witness is Dr. Ann Cavoukian. Welcome. I would ask, first of all, that you be sworn in, and I'll ask the Clerk to do that.

The Clerk of the Committee (Ms. Tamara Pomanski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Dr. Ann Cavoukian: I do. Thank you.

The Vice-Chair (Mrs. Laura Albanese): I understand that you have a 15-minute presentation to our committee. Please proceed. Thank you.

Dr. Ann Cavoukian: Thank you very much. Good morning, ladies and gentlemen. My name is Ann Cavoukian. I am the Information and Privacy Commissioner of Ontario. I'm joined today by my assistant commissioner, Brian Beamish.

Members of the committee, Chair, I want to thank you for the opportunity to comment on the investigation report that I released earlier this month called *Deleting Accountability: Records Management Practices of Political Staff*, which examined the deletion of emails by the chiefs of staff to the former Minister of Energy and the former Premier.

As you are aware, my office is responsible for overseeing freedom-of-information and protection-of-privacy laws in Ontario. It is further to this mandate that I'm here to speak to you about my report that I released on June 5 and the subsequent recommendations that I made.

In mid-April of this year, I received a complaint from Mr. Peter Tabuns, member of provincial Parliament for Toronto-Danforth, alleging that Craig MacLennan, the former chief of staff to the former Minister of Energy, had improperly deleted all emails concerning the cancellation of the Mississauga and Oakville gas plants. Upon receipt of his complaint, I immediately launched an in-

vestigation and completed it as quickly as possible, in about a month and a half.

I made a number of findings in my report; among them was that the former chief of staff, Mr. MacLennan, had a practice of routinely deleting all emails. Why, you might ask. Because he said he liked to maintain a clean inbox policy. A similar practice was also followed by the chief of staff to the former Premier, which I will be addressing shortly.

My report concluded that this indiscriminate deletion of all emails was in violation of the Ontario Archives and Recordkeeping Act and the records retention schedules developed by the archives. The practice also undermined the principles of the public's right of access to government records under the Freedom of Information and Protection of Privacy Act, in addition to undermining the transparency and accountability principles that form the foundation of both of these acts.

I found it very difficult to accept that the routine deletion of all emails was not an attempt by the staff in the former minister's office to avoid transparency and accountability.

Turning to the Premier's office, we interviewed David Livingston, former chief of staff to the former Premier. He, too, had deleted all of his emails. While I cannot say with complete certainty that there was improper deletion of emails by the former Premier's staff as part of the transition to the new Premier, in my view it simply strained credulity that it could be for reasons other than shielding one's activities from public scrutiny. Therefore, I concluded that the email management practices of both the former minister's office and the former Premier's office were in clear violation of the obligations set out in the Archives and Recordkeeping Act, the ARA.

The failure to comply with the records retention requirements of the ARA, coupled with a culture of avoiding the creation of written and electronic records, I believe contributes to explaining the paucity of documents relating to the gas plant closures. This occurred despite the fact that the secretary of cabinet indicated that he had taken steps some time ago, through the government's chief information officer, to inform Mr. Livingston of his obligations to retain records.

My report also made reference to the apparent lack of awareness on the part of political staff of their responsibilities under the ARA. I noted that there was a need for active training of all new political staff in order to

reinforce the fact that a blanket approach to deleting all emails was in breach of the Archives and Recordkeeping Act. Most important, this flies in the face of the principles of transparency and accountability that underpin the province's access-to-information regime.

In light of the findings arising from my investigation, I recommended that the government take concrete steps in three areas to ensure that records that may be subject to an access request under our freedom-of-information law are indeed retained.

First, I recommended that a directive be issued by the Premier requiring that a senior official within each minister's office and the Premier's office be designated as the person who is accountable for records retention and for ensuring that ministers' staff receive training on their records management obligations. The Premier should clearly communicate that these obligations must be taken seriously, along with a firm expectation that all staff must comply.

Second, I recommended that both the Freedom of Information and Protection of Privacy Act and its municipal counterpart, MFIPPA, be amended to address the government's responsibilities to ensure that all key decisions are documented and records securely retained and, most important, making it an offence to wilfully destroy government records.

Third, I found that, while the records retention policies of the Archives of Ontario were indeed very comprehensive, I felt that this was an opportune time to review and update the policies to ensure that they were crystal clear and in keeping with today's online world.

I listened with great interest to the testimony of Chris Morley, the earlier former chief of staff to the former Premier, and felt that it was important to address Mr. Morley's interpretation of the responsibilities of political staff to delete records, which, I must admit, I found to be misleading. His focus was entirely on the deletion of records, not with their retention. And his suggestion that there were "99 reasons why the rules require the destruction of records," was, in my view, a misinterpretation of the facts. Please allow me to explain.

Mr. Morley failed to acknowledge that the fundamental purpose of the ARA is the retention of government records. Let's start with the name of the act. It's called the Archives and Recordkeeping Act, not the record-deleting act. In fact, the only references to records destruction in the ARA are a handful of provisions telling people not to delete.

I brought it with me, because I just wanted to show you because it is just so clear. Do we have them anywhere? We will find them in two seconds. I just wanted to show you this. Page 7, section 15, of the ARA contains prohibitions against destroying public records. That's it. But Mr. Morley said—and if I can just point you to them. Literally, this half page—this is it. It says, "Prohibition against destroying, etc., public records."

Mr. Morley said that he had identified 99 circumstances in which there was an obligation to delete and destroy records, so how could this be? I want to be fair to

Mr. Morley. While his comments were technically true for some of the categories he identified, they were totally slanted in the direction of deletion. I reviewed his extensive list and must point out what I believe to be Mr. Morley's misinterpretation.

1040

First, many of the items on his list are simply repetitions; they're repetitive. For instance, 21 of the items: items number 1, 3, 8, 15—I've got this all outlined, and you're going to get a copy of all this; it's all in the records. These 21 items all refer to examples of records that qualify as duplicates or surplus duplicates. So, in reality, these 21 instances represent but a single category of records that may be deleted at a given point in time, not 21 separate categories. I think it's quite important to make that point.

So yes, it's true that duplicate records may be deleted, as I noted on page 10 of my report, but it is disingenuous, in my view, of Mr. Morley to take examples of this category and count them as separate exemptions of records that need not be retained. They reflect but a single category.

Incidentally, another six out of his 99 reasons why destruction of records were required were extracted from my report, which came after the fact, not before.

Secondly, as you know, the Archives and Recordkeeping Act does not apply to political or constituency records, as I also noted in my report. But this does not mean that there is an obligation to destroy these records. You are not compelled to delete them. Such a suggestion would be ludicrous, particularly for MPPs such as yourselves who may wish to retain such records. However, I note that in more than one instance, Mr. Morley referred to these excluded records as records that must be deleted, but there is no mandatory requirement to delete these records in either the Premier's or the minister's retention schedules. The schedules simply require that these records be stored separately from government business records.

What I found hardest to believe was that Mr. Morley did not acknowledge that the primary purpose of a record-keeping act was not with the deletion of records, but rather with their retention, to preserve records of government decision-making. That's what's key. This is the essential first step to enable openness and transparency, which are key to holding the government to account. It is unfortunate that his testimony only emphasized the circumstances under which records may be destroyed, as opposed to the requirements where government business records must be retained.

Mr. Morley's comments also overlooked the fact that email records are not necessarily transitory or duplicate records. Their context must be reviewed before they may be deleted in order to determine whether they should be retained, in accordance with the retention schedules. In other words, the content of the email, as with any document, is what determines whether it should be retained or deleted—substance over form. This was made abundantly clear in the retention schedules and in the training

materials developed by the Ministry of Government Services.

There are clear requirements to retain records relating to the following areas: policy development, program development, stakeholder relations, legislative activity, and ministers' and Premier's correspondence. These are critical categories of documents, particularly when government is dealing with important issues of public policy. It is simply not credible that documents falling within these categories would not have been in the possession of political staff at some point in the decision-making process, or that staff would not be aware of their obligation to retain any of these documents.

By adopting a "delete all" email policy, political staff were not addressing the requirement that government business records must be retained, with the exception of transitory, personal, constituency or duplicate records.

And while Mr. Morley may have been aware of his record-retention responsibilities—or more appropriately, his record-deletion responsibilities—it is clear that this knowledge was not widely shared, not the least of which by his successor, Mr. Livingston, who said that he had no record-keeping training and had not received any direction regarding the management of emails. This view was later contradicted by the secretary of cabinet.

As the last observation, the fact that Mr. Morley placed such a weight on the perceived obligation to delete emails rather than the real obligation to retain critical documents is, in my view, telling in and of itself. It is indicative of the problems discovered during the course of the investigation.

I'm pleased now to report that the new government has acted proactively to address the recommendations made in my report. Just last week, we met with the Premier's chief of staff, followed by the Minister of Government Services, his deputy minister, his chief of staff, the Ontario government's chief information officer, the chief archivist of Ontario and several others to discuss the steps being taken to rectify the situation on a go-forward basis.

Just yesterday, I received an update from Mr. Tom Teahen, the Premier's chief of staff, about the steps being taken by the new government to implement the recommendations in my report. I can tell you that a thorough review and update of the records retention schedules and policies has been initiated by the Ministry of Government Services. Policies and procedures are now being developed and senior staff are being designated in ministers' offices and the Premier's office to be accountable for ensuring that these policies are actually followed. Once these measures are in place, the Premier will issue a directive to all political staff that they're aware of their obligations and will be providing scenario-based training to all staff, which is a very positive development.

In closing, let me emphasize that one of the most important rights that citizens have in a free and democratic society is access to information about their government's activities. If I have time, I'd like to tell you about a new

program that we introduced last year called Access by Design to expedite government openness even further.

One thing is clear: Without written records of how government decisions are made, transparency is seriously undermined and the basis for the government's policy choices is shielded from public scrutiny. Without such scrutiny, there can be little accountability, which in turn jeopardizes our free and democratic process. It clearly erodes the public's trust in government and, in turn, our very freedom.

I think it was Thomas Jefferson who said that the price of liberty is eternal vigilance, and I believe that's what we're doing here today.

I thank you very much for your time and I'm happy to answer any questions you may have.

The Chair (Mr. Shafiq Qadri): Thank you, Commissioner.

We'll begin with the PC side. Mr. Fedeli, I offer you the floor.

Mr. Victor Fedeli: Thank you very much, Chair. Welcome, Dr. Cavoukian.

Dr. Ann Cavoukian: Thank you.

Mr. Victor Fedeli: We're very pleased to have you here. Welcome, Mr. Beamish, as well.

Commissioner, in your opinion, was the document destruction a violation of the law?

Dr. Ann Cavoukian: The document destruction was a violation of the ARA, the Archives and Recordkeeping Act of Ontario. It was in breach of that, so yes, it was in violation of that law.

Mr. Victor Fedeli: You have delivered a scathing indictment of the Liberal government today, yet last week, Premier McGuinty's former chief of staff, Chris Morley, was here—as you pointed out—and he argued that the document destruction was entirely in keeping with the law. Aside from your comments that start on page 8, do you agree with his overall statement?

Dr. Ann Cavoukian: Again, to be fair, what Mr. Morley indicated in his remarks and in the statements he provided was technically accurate, but again, the method of presentation suggested, in his language, that there were these 99 reasons that you could keep things exempt and prevent them from being retained. That's what I took issue with. Nowhere, in any of those documents, are you going to find that these are the 99 exemptions that are permitted. We classified them into four areas relating to political, constituency, duplicate and personal records that could be exempted. Public records—information that was already published—we didn't include that because we thought that spoke for itself, that this was already out there.

But with respect to those four areas of exemption—to suggest that there are 99 areas I think is highly misleading because it characterizes the Archives and Recordkeeping Act as a document that is there for the purpose of deleting records and destroying them as opposed to the exact opposite, which is all about the preservation of records, the retention of records, which, as I said, in our

view, forms the foundation of our free and democratic process.

Access to government records is absolutely essential to keeping accountability. So I disagreed with his characterization of those records.

Mr. Victor Fedeli: You state there was a culture of avoiding written records. Who, in your opinion, would have been responsible for this?

Dr. Ann Cavoukian: We interviewed the former chiefs of staff of the Minister of Energy and the former Premier's office. They both had a very—I don't want to say "cavalier attitude" towards the retention of email records, but that's what came to mind because it was, "Of course I deleted all my emails every day. I want to keep a clean inbox policy." Who does that? We are all very busy people. Also, these people, to be fair to chiefs of staff, are running; they're putting out fires every day. They don't have a minute to breathe. They're running from issue to the next issue, which I totally respect and accept.

1050

Contrast that amazing, busy cadre of activities with being absolutely fastidious about cleaning your emails and deleting all your emails. It just doesn't jibe with that.

In my view, I think this was their own—I had no reason to believe that they were directed to do this. I felt that they just decided, "This is what we're going to do," and it was their choice to do so.

Mr. Victor Fedeli: It was encouraged by senior staff. What about elected officials? Did you ever find that they went out of their way to avoid creating written records as well?

Dr. Ann Cavoukian: I have no evidence to suggest that.

Mr. Victor Fedeli: The lack of emails from the Minister of Energy: Would that indicate this as well? We have virtually no emails from the Minister of Energy, or from the Premier, actually, on this issue.

Dr. Ann Cavoukian: I want to be very fair. We only interviewed the chiefs of staff and spoke to them about their practices and the staff of the former Premier and the former Minister of Energy. We did not actually speak to the minister and the former Premier.

Mr. Victor Fedeli: When you first came out with your report, I have to say—I'm going to take a personal moment here, if I may. After all these months, I should be allowed a personal moment to reflect.

On September 24, the batch of documents was released; 36,000; 20,000 were held back, as we've learned here in testimony, ordered by the Ministry of Energy.

My colleagues Leone and Yakabuski and I stood up in the Legislature the very next day and said, "Hang on a second here. We've asked you for all documents. There's nothing here from the Minister of Energy on the cancellation of an energy plant. There's nothing here from the Premier, who has ordered the cancellation of an energy facility. Why?"

For nine months they pointed fingers at us, suggesting that we have conspiracy on our brain. Your report—I'm going to use the word "vindicated." It vindicated all of us

who have pointed fingers at these holes and said, "There are no emails. Something is wrong." How can you have a cancellation of a gas plant—I'll ask you a question. Have you ever seen anything like this before in your tenure?

Dr. Ann Cavoukian: I don't believe I have, not to this scale.

Mr. Victor Fedeli: I'd like you to refer to Liberal gas plant scandal document number 1. On April 16, 2013, a freedom-of-information was filed requesting gas plant-related records from nine former Premier's office employees. Only six of the nine individuals had responsive records. Five of them, including David Livingston, confirmed that no records were found. It was revealed that three of them, Chris Morley, Sean Mullin and Jamison Steeve, had their accounts purged. I would say to you that this scandal is much deeper and more extensive than merely Mr. MacLennan and Mr. Livingston.

This is a letter that we received back from Cabinet Office, which I ask you to take and keep. Perhaps you would consider further action now that we know that Mr. Morley, Mr. Mullin and Mr. Steeve are too part of this cover-up. Would you consider adding them to a further investigation similar to the one you did of Mr. MacLennan and Mr. Livingston?

Dr. Ann Cavoukian: I'm going to just respond for a moment, and then I'll ask Mr. Beamish to also respond.

I'm going to start by saying that we will certainly take it under advisement. I want to be clear: We want to make sure that we have the necessary jurisdiction to review matters. As you know, under the Freedom of Information and Protection of Privacy Act, we review matters relating to records and access to records, denial of access, the destruction of records, as we looked at here.

All of this started—as you may recall, it was all the Ministry of Energy. There was the Speaker's ruling and there was a motion before that relating to the Minister of Energy and records emanating from his jurisdiction. That was then followed by Mr. Tabuns's filing a complaint with us asking us to investigate that matter. So it was quite narrow at the beginning, and we expanded it somewhat during the course of our investigation.

So what I will say, and I'm going to ask Mr. Beamish to respond as well in a moment, is that we would consider, as we do on an ongoing basis—if there are matters relating to freedom of information that are being subverted and require investigation, and we have the authority to do that, we would certainly launch another investigation or expand this one. But I would very carefully review the requirement first.

Brian?

Mr. Victor Fedeli: Thank you.

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there. Mr. Beamish, any witness before this committee needs to be sworn in, which I invite you to do now.

Mr. Brian Beamish: Can I affirm, please?

Interjection.

The Clerk of the Committee (Ms. Tamara Pomanski): Do you solemnly swear that the evidence

you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Brian Beamish: I do.

The Chair (Mr. Shafiq Qaadri): Go ahead.

Mr. Brian Beamish: This is an area where we have to step very carefully. We currently have a number of outstanding appeals arising from FOI requests in this area. Those are active appeals in front of our tribunal. In fact, I'm the adjudicator on one of them and have not reached a decision. So we have to be very careful about making any comments about what is in fact a live issue in front of us as a tribunal.

I think you can be assured that as this particular appeal makes its way through the appeal process, we will look very thoroughly at whether there should be other records, and if not other records, why not.

Mr. Victor Fedeli: So would it help if this committee passed a motion coming from this justice committee, as opposed to someone doing an appeal on their freedom-of-information request?

Mr. Brian Beamish: I guess that's something for the committee to consider.

Mr. Victor Fedeli: Okay. Thank you very much. So I would ask you, then, based on your first investigation of both Mr. MacLennan and subsequently Mr. Livingston, and now these three names that came up—Chris Morley, Sean Mullin and Jamison Steeve, who had their accounts purged—do you think it's coincidental, then, that nearly everyone who had a hand in this scandal has failed to produce any records or have now, as we've further learned, had their accounts deleted? Is this coincidental?

Dr. Ann Cavoukian: With respect to the two individuals in my report, that I definitely am familiar with, as I use the language of it "straining credulity" that there was not a single email that was retrieved. I haven't been able to investigate these other individuals, and so I want to refrain from commenting about their issues.

I just want to say that if there is not one, single email that is located in association with any of these, what are the odds of that? I mean, it just seems to me that it's truly an incredible occurrence that not one email could be found on a subject matter that is so important.

Mr. Victor Fedeli: We feel the same way, so we may be putting something a little more formal to you to conduct an investigation into at least these three, then, considering we do have a letter from cabinet that says there are no records from these three people who we know to be heavily involved in this particular scandal and subsequent cover-up.

In your report, you state that the hard drives were wiped clean, or "purged," to use Premier Wynne's terminology. The contents were transferred onto electronic portable devices, such as a USB key, I'm presuming you are referring to. Who is responsible for transferring that data? Have you been able to determine that?

Dr. Ann Cavoukian: Forgive me. I don't recall—I was just checking with Mr. Beamish. I don't think we included anything of USB keys in our report.

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Mr. Victor Fedeli: You called it "electronic portable devices": page 24 of your report. Down at the bottom of page 24: "The CIO confirmed that he had been contacted by Livingston in late January 2013, asking for the administrative computer system passwords so that they could transfer electronic records from the desktop computers of staff to portable electronic devices and 'wipe clean' the computers as part of the transition process." So it was the transition sector then.

Dr. Ann Cavoukian: Yes. Now, let me be clear: On page 24, what we outline is what we expect would happen during a transition period—

Mr. Victor Fedeli: Oh, okay. That's different.

Dr. Ann Cavoukian: Further down, we did say, as you indicated, that during our interview with the secretary of cabinet, we learned that the former Premier had announced his resignation, and prior to the appointment of his successor, Mr. Livingston had approached him asking for administrative system advice regarding how to wipe clean the hard drives to the Premier's—so he did ask that question to the former cabinet secretary.

Mr. Victor Fedeli: So you're not aware of whether that was actually followed through, whether those portable devices were indeed utilized?

Dr. Ann Cavoukian: That's correct.

Mr. Victor Fedeli: Would you know of the existence, then, of these portable electronic devices?

Dr. Ann Cavoukian: Not that we're aware of; not through our investigation.

Mr. Victor Fedeli: So you don't know if any were provided to Cabinet Office, the OPS or whether they were indeed made and kept in possession of staff? This is not something that you're aware of?

Dr. Ann Cavoukian: We are not aware of that.

Mr. Victor Fedeli: Is that something that concerns you?

Dr. Ann Cavoukian: Certainly information has to be transferred prior to having devices wiped clean—of course; there's no question. The question would be, "Was the information first transferred, as one would require?" Then you can wipe the devices clean to give the device to the next person after the transition happens. That would be the question we would look at.

Mr. Victor Fedeli: So—

Dr. Ann Cavoukian: Sorry. We have one more comment.

Mr. Brian Beamish: The other possible explanation is that because some staff had a clean inbox policy and routinely deleted all their emails, in fact there were no emails on those devices to be transferred.

Mr. Victor Fedeli: Very good point. Thank you very kindly. Later, in the last 10 minutes, we're going to get back to talking about the destruction of the backups and that kind of thing.

Right now, I want to go to your opening comments, on page 8—thank you very much for such a direct comment. You talked about the new government rectifying the situation. Has anything to rectify the situation been done

to deliver the deleted emails or any of the emails that have been destroyed? Has any of that come forward?

Dr. Ann Cavoukian: The short answer is no, but the reason, I think, is because the new government wouldn't have a clue where those emails are—

Mr. Victor Fedeli: Oh, I think they do, by the way, and I don't really consider them to be a very new government. It's the same old faces. Dr. Cavoukian, we're still here asking questions about how much this scandal cost and who ordered the cover-up, so we really don't have any new answers so far.

Dr. Ann Cavoukian: You're right, but let me add one thing: What I'm speaking to is the recovery of the emails that have been deleted. We went to great lengths—and if you want, we can talk about it later because I think you mentioned it—to unearth those, and that's what doesn't exist.

Mr. Victor Fedeli: We're going to talk about that later.

Do you know, in the new government's policy of now using Gmail accounts—have you been made aware of this: that they communicate by Gmail, which keeps them away of the freedom of information? Is that one of the new revelations of this government?

Dr. Ann Cavoukian: I'm going to ask Mr. Beamish to address that as well, but my understanding is that the government, especially political staff for non-government-related business—

Mr. Victor Fedeli: But I'm talking gas plant scandal information, here. This is specifically Gmail talking about gas plant scandal.

Dr. Ann Cavoukian: Gas plant. Brian?

Mr. Brian Beamish: I would say it's a misnomer to think that simply because you use Gmail you've somehow removed records out from the Freedom of Information and Protection of Privacy Act. Records are records, and if they're responsive to a request, they are responsive, whether they were sent by—

Mr. Victor Fedeli: Unless they're deleted and we don't find out they had them.

Mr. Brian Beamish: Well, yes. But simply by sending emails by Gmail, you have not removed the content of those records from the Freedom of Information and Protection of Privacy Act.

Mr. Victor Fedeli: Okay. Under this new go-forward situation—you realize, of course, that they have been there for five months. The government has been there for five months, and it took the OPP investigation and the threat of jail doors slamming behind people before these changes to rectify the situation had been made, and again, we still don't have any material. We're still sitting here, asking witness after witness, "How much did this scandal cost, and who ordered the cover-up?" We don't particularly find anything new other than the material that we are now sending to the OPP, because thanks to your report, actually, the OPP have found enough information to launch a full criminal investigation. So I would say that there's nothing new about this particular apparent change of heart.

I do want to ask—just quickly, so I understand and so I can formulate some other thoughts while the others are speaking—about the destruction of backup. Take a moment and just tell me, in a nutshell. I haven't been able to comprehend how that can even have been done.

Dr. Ann Cavoukian: I know, and I was of the same view until we got into this investigation. The Ministry of Government Services uses something called a RAID server, a redundant array of independent disks—I believe that's what it's called. It's for massive amounts of emails. I think the government has 90,000 active accounts on a daily basis, and a billion records over time. It's just massive.

So what they do is, there is a daily backup for disaster recovery purposes, but then, over the course of a week, and definitely a month, all of the data on the disk is overwritten, rewritten—

Mr. Victor Fedeli: I can't tell you how many—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: He literally can't tell you.

Mr. Victor Fedeli: I really can't tell you. In 40 minutes, we'll be back.

Mr. Peter Tabuns: Thank you, Mr. Chair. Dr. Cavoukian, first of all, my thanks to you, to Brian and all your staff for the excellent work you did. I thought you did your duty and you did it admirably—all of you.

Do you believe that the Premier's office—you weighed in on this, but there's a point I just want to emphasize—was actually following its own laws in the Archives and Recordkeeping Act and freedom of information in its practices with regard to record-keeping?

Dr. Ann Cavoukian: The area I can comment on is the deletion of emails, because that's what we investigated, and that was really the only thing we investigated relating to records retention. Clearly, they weren't following the law in respect to that, because they were in breach of the ARA, the Archives and Recordkeeping Act. So with respect to that finding, they clearly were not following their own law. With respect to the retention and their intentions, I can't speak to that.

Mr. Peter Tabuns: Okay. If New Democrats submitted a freedom-of-information request for PINs—personal messages on BlackBerrys—to the Premier's office, including the Premier himself, would there be any reason to exclude them from coverage of freedom of information or the Archives and Recordkeeping Act?

Dr. Ann Cavoukian: It would depend on the content. Brian?

Mr. Brian Beamish: I think that—again, similar to Gmail—the fact that a communication is sent by PIN does not, in and of itself, remove it from the coverage of the act. The nature of PINs is, I suppose, that it's more likely to be what would be called a transitory record; they tend to be very short, pithy comments, but if there was substantive work done by way of PIN, then yes, that would come within the ambit of an FOI request, even if it was by PIN.

Mr. Peter Tabuns: So as long as it's responsive, it doesn't matter what the form is.

Dr. Ann Cavoukian: Right. That's correct.

Mr. Peter Tabuns: Does it seem to you that the failure to keep records was simply an oversight, or does it speak to something else?

Dr. Ann Cavoukian: I think it has to speak to something else on such a massive scale. If it was just the odd email here and there, I would understand that; we all can delete things mistakenly. But I think that there was not one record, one email, retained. It seems excessive to me on the part of the two chiefs of staff that we interviewed.

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Mr. Peter Tabuns: Do you believe that political staff are actually aware of the responsibilities to maintain records?

Dr. Ann Cavoukian: The individuals that we interviewed said that they were not aware, that they had not received record-keeping training and were not aware of their obligations under the ARA.

Mr. Peter Tabuns: Does that strike you as credible?

Dr. Ann Cavoukian: It was contradicted by the secretary of cabinet.

Mr. Peter Tabuns: Yes, it was, very strongly, in fact. I don't believe that failing to keep the information was simply a misunderstanding of the act. Would you concur with that?

Dr. Ann Cavoukian: It would be difficult to conclude that this was just an oversight and that all the emails got routinely deleted because they wanted to clean their inbox.

Mr. Peter Tabuns: Okay. On page 21 of your report, you note that training began with staff after your investigation, in April, three months after the new Premier was sworn in. This was six months after the NDP had raised the issue. If staff already were largely aware of their responsibilities, was this more a communications effort than anything else?

Dr. Ann Cavoukian: I think it could also be just driving home this exercise. We all talk about record-keeping and that it's important etc., but it's sort of this dull, boring thing. No one's focused on it. You focus your attention on the business of the day. There are a million things going on. So it may be drawing attention back to it.

Brian, your thoughts?

Mr. Brian Beamish: I think the individuals that were interviewed during the investigation showed that they did not have a complete understanding of their records retention responsibilities. I think that might explain why some training was undertaken.

Mr. Peter Tabuns: Okay, thank you, Mr. Schein?

Mr. Jonah Schein: Thanks. I want to echo my colleague's gratitude for the good work that your office has done. We appreciate it.

My question is, do you have any indication that the current Premier has moved away from what you called a "verbal culture" of communication in her new office?

Dr. Ann Cavoukian: I believe that to be true. I think it was April 17—I can't even remember. Before we had the report issued, she had already started staff training on the importance of retaining records, both in email content and physical, and that was followed by a memo by her current chief of staff to all staff, reminding them of their obligations under the ARA and their record retention responsibilities. So I think she takes it quite seriously, and that's what we've seen to date.

Mr. Jonah Schein: Thank you. Chris Morley testified that he maintained records on important files that were being managed by the Premier's office. These included teachers' negotiations, Samsung, the 2012 budget, communications materials and some miscellaneous materials. Do you find it strange, given the prominence of the gas plants issue, that he would have saved information on these other files but not on the gas plants?

Dr. Ann Cavoukian: Yes.

Mr. Jonah Schein: Is it credible that every record created by Chris Morley, either emails, PINs, or paper records, was either a duplicate or a transitory record?

Dr. Ann Cavoukian: It defies probability. Brian?

Mr. Brian Beamish: Yes, I think as the commissioner pointed out in her report, one would have thought there were some communications that would have been there—minister to minister's office; communications within the Premier's office; communications with stakeholders—where there wouldn't have been surplus duplicates that were in the hands of the ministry staff themselves.

Mr. Jonah Schein: What other issues is the Information and Privacy Commissioner in the process of considering in respect of information that has been destroyed by the Premier's office?

Dr. Ann Cavoukian: I think you've heard that the OPP have started an investigation. We are meeting with them tomorrow, and we will be co-operating with them fully, of course.

If they are in a position to be able to retrieve some of the deleted records—I will go to great lengths to explain why we couldn't—I would welcome that. I would welcome their intervention. They have an entire department that is devoted to such activities, whereas I do not, and perhaps they can unearth something that we were not successful in unearthing. I think that's unlikely, but I would welcome their intervention, and they will have our full co-operation.

Mr. Jonah Schein: When New Democrats requested information about Project Vapour, we were told that no records existed in the Premier's office. Do you find this believable?

Interjection.

Dr. Ann Cavoukian: The reason I'm going to refrain from commenting on that is that Mr. Beamish currently has an appeal before him that's about to be adjudicated, so if you wouldn't mind, that decision will be out shortly.

Mr. Jonah Schein: Thank you. I'm going to turn it back to my colleague Peter Tabuns.

Mr. Peter Tabuns: Mr. Beamish, you may be conflicted on this. I'll address it to you, Dr. Cavoukian. You heard nothing today.

We appealed our freedom-of-information requests around the documents related to Project Vapour and Vapour-lock. Premier Wynne's office has taken up the torch arguing against our appeal, saying that we made assertions about deletion of records that have nothing to do with the freedom-of-information and privacy protection act. Isn't the law based on the idea that records will be kept?

Dr. Ann Cavoukian: Of course. I don't want to say too much because this matter is under appeal, but what I tried to make abundantly clear in my remarks this morning is that the retention of government records, what we call general records, forms the basis of freedom-of-information laws. That is what enables the public to scrutinize the activities of government by accessing that information, which, I always like to remind the government, is that of the public. The government is there at the pleasure of the governed. This information is the public's information, subject to certain exemptions. In a word, freedom of information is essential in terms of having records retained, in order to be able to make it accessible to the public. That's a long way of answering your question.

Mr. Peter Tabuns: I don't mind—a thorough answer on this matter; very useful.

The thrust from Premier Wynne's office in this matter, saying that these matters also fall outside the commissioner's authority established under section 52 of the freedom-of-information act, which authorizes the commissioner to conduct an inquiry to review any decision made by a head of an institution—I'm sorry; it's a long section there. It sounds to us like the Premier is trying to keep you away from these files.

Dr. Ann Cavoukian: I'll ask Mr. Beamish to respond. Technically, she is within her purview to quote appropriate sections like that. Brian?

Mr. Brian Beamish: As a starting point, the freedom-of-information act is not a retention act.

Mr. Peter Tabuns: That's correct.

Mr. Brian Beamish: There's only one requirement in the regulations for the retention of information, and that relates to personal information that has been used by a government organization. That has to be kept for a minimum of one year. The act that we're responsible for really doesn't speak directly to records retention.

As the commissioner said, it's interwoven with the archives act. If the records aren't kept in accordance with the archives act, then they're not available to be there for a freedom-of-information request. I took that to be the tenor of the submission.

We have had no hesitation to co-operate with our work, at any level, from anyone we've dealt with. So I don't think there has been a suggestion that the commissioner should not be involved in this by anyone. Is that correct?

Dr. Ann Cavoukian: I totally agree. Just take it to the extreme—and this is going to sound ludicrous. One of the reasons we're asking for a review of the ARA—and also our act, the freedom-of-information act—is because it is predicated on the belief that there are going to be government records that the public can access. That's the whole predicate of freedom of information. If you didn't have government records retained, what is it that the public would access in order to scrutinize the activities of government? They would have nothing. I'm sure that when FOI was being developed, it never occurred to anyone that there might be massive deletion of records, so it was never added specifically as a section: "Thou shalt retain these records." It's a given. So perhaps there has to be a greater interplay with the ARA, the Archives and Recordkeeping Act, and FIPPA.

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Mr. Peter Tabuns: Okay. There has been an awful lot of publicity around this in the last six months, a year. When documents initially came out and were given to us in the Legislature, we made it very clear that it was obvious there were big gaps: Records were missing. I think that politicians, political staff, people in the Ontario government community were aware of that. Is it credible that Premier Wynne was not aware that there was document destruction before she came into office?

Dr. Ann Cavoukian: I honestly can't speak to that because we did not interview Premier Wynne; we didn't interview people associated with that. I have no reason to believe that she was aware of it. I simply have no evidence to that effect.

Mr. Peter Tabuns: So you can't comment one way or the other.

Dr. Ann Cavoukian: I cannot.

Mr. Peter Tabuns: One of the things that was striking to us, and I'm not sure if you're aware of it, is that John Kelly from the Ministry of the Attorney General, in testimony before us, said that in April 2011, because of the possibility of lawsuits, there was wide discussion then of preservation orders, preservation letters, to everyone involved in this matter to maintain their records so that if Ontario went to court, it wouldn't be in a situation of saying to a judge, "Your Honour, unfortunately, we have no records in this matter."

Were you aware that—sorry. If, in fact, these gentlemen were given extra notice of the necessity of keeping records, does that change your opinion of their deletion of these records?

Dr. Ann Cavoukian: I think the deletion of the records—and I think we went to great lengths in the report to express our view of how inappropriate it was and how improper it was. So I think we were as negative as one could be relating to that matter. I would have to look at the preservation orders and really address that issue in order to see if that would impact our conclusions.

Mr. Peter Tabuns: Thank you. The request for documents about Project Vapour and Project Vapour-lock was made in the fall of 2012. At that time—sorry. The accounts of the chief of staff, principal secretary and energy

adviser were destroyed in the summer, shortly after estimates asked for the gas plants information from the Ministry of Energy. We were told that if a freedom-of-information request had been made in the summer, those accounts would have been preserved. However, we were unaware of the term "Project Vapour" or of the extent of the involvement of the Premier's office at that time. Would you agree that that creates a significant barrier to accountability?

Mr. Brian Beamish: Yes. As I understood the testimony, in terms of the deleted accounts, the proper practice would have been to save any records that were business records—public records, business records—from those accounts, and then delete the accounts. That would have been proper.

We don't know what happened with those accounts, whether that proper procedure was followed or not. Again, it would not have depended on whether—if they were records that should have been retained, it wouldn't have mattered whether they were called Project Vapour, Vapour-lock or what have you. You're quite right.

Mr. Peter Tabuns: They should have been.

What impact does that verbal culture have on your ability to do your job for us in this province?

Dr. Ann Cavoukian: If you take it to the extreme, imagine that government records weren't retained on an on-going basis for a fear of whatever. That would be my biggest concern.

Freedom and democracy is predicated on the public knowing the business of government and the policy decisions being made and the programs and how funds are being invested etc. It's absolutely essential that we have openness and transparency of government activities as reflected in the government's records.

If you had no records—I mean, it's preposterous—then you couldn't have the kind of accountability that is predicated on the existence of such records to enable the public to have access to this much-needed information.

I'm always reminded of Attorney General Ian Scott, who was Attorney General when I started working many, many years ago. He always said, "I will never accept"—I forget the exact quote—"that the business of the government is none of the public's business." That just was so telling to me, that we have such a positive, affirmative obligation to retain government records so that precisely they can be made accessible to government. It is the public's right to know. It's simply untenable that we could have a verbal culture permeate to the exclusion of written records.

And let me just add one thing. I say "to the exclusion of written records." It doesn't mean that we can't have verbal discussions. Of course, we have to have them. In fact, I prompt my team all the time.

The Chair (Mr. Shafiq Qaadri): One minute.

Dr. Ann Cavoukian: I say, "Get up and talk to me; don't just send me an email." I want verbal culture. It's absolutely critical. You just don't do it to the exclusion of written records.

Mr. Peter Tabuns: You were very thorough in going after Mr. Morley's testimony. One of the things that was really noticeable to us is that he had kept records about the Samsung deal; he kept records about teachers' negotiations. He had handwritten notes about teacher negotiations, he referenced in his testimony. And yet for this white-hot issue that was dominating question period and slowing down the Legislature, he had zero. Does this seem entirely inconsistent with what seemed to be his practices?

Dr. Ann Cavoukian: It was clear that that one issue was the outlier, and that seemed to be the case in the investigation that we conducted as well, and interviews that we conducted.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Mr. Del Duca?

Mr. Steven Del Duca: Thank you very much, Mr. Chair. Thank you, Dr. Cavoukian, for being with us here today.

I just want to begin by talking a little bit about some of the Premier's office records. Opposition members of our committee have talked a lot about the information that they believe is, as they say, missing. But I think it's important, as we start today here, from our side, that we make clear a little bit about the sheer volume of information that has actually been disclosed to date. I'm pretty sure you'd probably be aware of this, but I just want to clarify it.

About 4,000 documents were provided in April in response to a request related to the Oakville and Mississauga gas plants. Also, in addition to that, the Premier's office provided about 30,000 documents in May in response to a request from this committee, which included emails, transition materials and even handwritten notes—handwritten notes, for example, from people like Jamison Steeve and Sean Mullin, some of the names that were referenced here earlier today by members opposite. That also included, in some of those batches, emails which were presented to this committee last week for members opposite from Mr. Morley regarding this particular issue.

So you have thousands of emails, transition and communications materials, and some handwritten notes. I just wanted to make sure you are aware of the fact that there is an inordinate amount of information that has been disclosed, has been provided to this committee throughout this process regarding the Mississauga and Oakville gas plants. Is that true?

Dr. Ann Cavoukian: Thank you. We were aware of that. We were restricting our comments to the emails associated with those individuals we interviewed.

Mr. Steven Del Duca: Okay, terrific.

With respect to the process that you undertook with respect to the investigation itself, on page 6 of the report you did state, "Throughout this entire investigation, my office received the full co-operation of all parties involved, including the Premier's office, Cabinet Office, the MGS, current and former staff in the Minister of Energy's office, and the Archives of Ontario staff."

In a letter to the *Toronto Sun*, you stated that “the offices of the Premier and Minister of Energy have co-operated fully with my investigation into this matter.”

Can you speak in a little bit more detail about the support and the co-operation that you’ve received from these parties?

Dr. Ann Cavoukian: Of course, and I’ll ask Mr. Beamish also, who is directly responsible for the investigation.

At no time did we get any negative responses. Whenever we inquired, whenever we approached anyone’s office, they were fully co-operative. I can’t think of one “no” that we were told.

Brian, you were hands-on, so maybe you could just expand on that.

Mr. Brian Beamish: No, I think that’s fair. As the commissioner said, we had a list of people we wanted to interview. There was no push-back at all. In fact, everyone we wanted to interview was more than happy to agree to that. We had full co-operation from all levels.

Mr. Steven Del Duca: Terrific. I know that in your opening statement and also in response to some of the members opposite, you have mentioned here today that you have spoken and met with the Premier’s chief of staff and Minister John Milloy and his staff, following the release of your report. Are you satisfied that your report is being taken seriously by this government?

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Dr. Ann Cavoukian: Oh, I am. When we had the very large meeting last week with a number of parties there, it was clear that our recommendations would be followed. One of them relating to legislative changes—that takes a little more tweaking, the drafting of legislation—but we were also assured that was going to be forthcoming, and any co-operation we needed was there. So I have no complaints at all relating to that.

Mr. Steven Del Duca: Premier Wynne has also taken many steps to be open and transparent on the issue of the specific relocated gas plants. For example, it was Premier Wynne who offered a select committee to investigate these matters. It was Premier Wynne who asked the Auditor General to look into the Oakville situation. It was Premier Wynne who expanded the scope of this committee, which to date has heard from somewhere in the neighbourhood of 40 witnesses.

The government members on this committee have also put forward a motion to provide the committee with all documents, government-wide, but the opposition actually voted that one down.

Since then, dozens of motions have passed for documents and, again, the committee has now received over 130,000 documents from this government, including 30,000 documents from the Premier’s office, and has thousands of pages of emails and files from the former Premier’s office.

So from your perspective, with your expertise, given all of the steps that Premier Wynne and our government have taken, would it not seem apparent that there is a real

desire to be as open and transparent as possible on these issues by this government?

Dr. Ann Cavoukian: I think, speaking for this government, I would answer yes. This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming—Brian, please expand if there’s something I’m missing—but we have not had anything suggested as not being doable, in terms of things we’ve requested.

Mr. Brian Beamish: Yes, we’ve been focused in on our report and our recommendations, and to the extent that the commissioner released her report with her recommendations, we’ve had very good feedback from the government.

You’ve raised some other issues that aren’t directly related to our report, and we really can’t comment on that.

Mr. Steven Del Duca: Okay, thank you.

I want to move on a little bit to talk about the concept of transitory records. As the ARA lays out, transitory records are not required to be kept. The Common Records Series defines these records as “records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record.”

When this committee asked Secretary Wallace about his personal experience with transitory records, he told us, “From the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant.”

Does that seem to be an accurate characterization of transitory records to you?

Dr. Ann Cavoukian: I think so, and I think we can all understand that. I have a million exchanges with my team every day. I ask them to do something and they say, “Will do.” There’s all kinds of transitory emails like that, to describe it that way.

I think what was telling in our investigation was just the complete absence of any emails associated with a particular topic.

Mr. Steven Del Duca: I appreciate that, but I just want to—I think clarification around this particular issue is extremely important because, from our perspective, there is a fairly wide misconception, and perhaps I would say a deliberate attempt to mislead on the part of some of the opposition members, that every single piece—

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. Mr. Del Duca, I invite you to adopt parliamentary language, although I must say, that word has been used thrice today.

Go ahead.

Mr. Steven Del Duca: Perhaps a deliberate attempt to confuse, by the opposition—that every piece of paper needs to be kept. But I think that you would agree that’s not really the intent of either the freedom-of-information legislation or the archives legislation—that’s correct, would that be?

Dr. Ann Cavoukian: I think in our report we made it clear that decisions relating to the business of government must be retained. There are transitory records, there are duplicate records, there are personal records and there are constituency records. Those are the categories that do not need to be retained.

But I think suggesting that transitory records are so broad that they would capture entire categories of information, in my view, would be excessive.

Interjection.

Dr. Ann Cavoukian: Please, Brian.

Mr. Brian Beamish: I think the commissioner notes in her report that the records retention schedule requires some judgment to be brought to bear on whether a particular email is transitory or not. If you adopt a practice of deleting every email, you are clearly not bringing any judgment to bear; in effect, you’re treating every email as if it’s transitory, and that simply is a practice that shouldn’t be followed.

Mr. Steven Del Duca: You said at the outset today that when Mr. Morley was here, his assertion about how this should be undertaken—that he was technically correct. I did hear that earlier, when you were answering a question from Mr. Fedeli?

Dr. Ann Cavoukian: I said “technically correct in certain areas.”

Mr. Steven Del Duca: And in your opening statement, you talked about—

Dr. Ann Cavoukian: “Certain categories.”

Mr. Steven Del Duca: Sure.

In your opening statement, you also talk a little bit about how when Mr. Morley was here, he said he identified 99 circumstances. You point out that in several of those instances, from your perspective, there’s a duplication in terms of his citations. I presume that’s what you’re referencing.

Dr. Ann Cavoukian: Yes.

Mr. Steven Del Duca: So you pointed out 21, and then an additional six—I’m just looking for it here. I think that another six out of those 99 reasons—and perhaps, from some of his language last week, whether there’s an obligation or not an obligation or it’s okay to do it or not to do it. But if I understand your opening statement correctly, though there is some duplication, perhaps, in his citations, generally speaking, he identified a number of instances in which, depending on the nature of the communication, it was, if not necessarily obligatory, certainly permissible to delete or to remove or eliminate some of the information that we’re talking about. Right?

Dr. Ann Cavoukian: Permissible, yes, and we’ve summarized—and I know that it will be made available to you. We’ve collapsed his 99 categories into the five

categories that I referred to earlier. Eighty of his references, 80 of the 99, fall under transitory records, two fall under personal records, 10 for political party records, five under constituency records and two under published works. So the majority were transitory records. Again, as Mr. Beamish pointed out, in order for transitory drafts to be deleted, you have to make a determination first as to the content of the email.

Mr. Steven Del Duca: Okay. On page 9, you discuss two general categories of records in the office of a minister and the office of a Premier. They are (1) public records, and (2) personal, political and constituency records. On page 10 of your report, you go on to explain that “ministers’ and the Premier’s personal, political, and constituency records are those generated by ministers in their capacity as members of the Legislature and as private citizens.” Can you explain for us a little bit more about these personal and political records, and why they are not required, under the ARA, to be retained?

Dr. Ann Cavoukian: I’ll ask Brian to expand, but you can imagine emails that are personal in nature: “I’ll meet you at so-and-so place at noon for lunch”—silly nothing things that are truly personal in nature and would have no government-activity-related interest. That’s one example. Brian?

Mr. Brian Beamish: Well, I wouldn’t say that the ARA says they shouldn’t be retained. The ARA simply says they’re excluded. The Archives and Recordkeeping Act is designed to set up records retention for government business. MPPs’ constituency work is not government business; their political activities are not government business. The ARA is simply saying that these retention schedules related to government business do not relate to them. In fact, Mr. Morley went further and said that there is an obligation to delete those records, which is just simply not correct.

Mr. Steven Del Duca: But it is permissible to.

Mr. Brian Beamish: Well, it is, but I—

Dr. Ann Cavoukian: But it’s not a mandatory “Thou shalt.”

Mr. Steven Del Duca: No, I understand that—

Dr. Ann Cavoukian: It’s discretionary.

Mr. Steven Del Duca: —but it doesn’t actually violate the act to do that.

Mr. Brian Beamish: You’re quite right.

Mr. Steven Del Duca: Okay. Thank you.

Because this has been brought up quite a bit, including again today, with respect to the so-called USB keys, I’m not a technologically evolved human being, necessarily, I suppose—

Dr. Ann Cavoukian: Neither am I.

The Chair (Mr. Shafiq Qaadri): You seem sufficiently evolved to us, Mr. Del Duca.

Mr. Steven Del Duca: I appreciate that. I hope that’s in the record somewhere.

Following the release of your report, some of the opposition members have alleged, and in fact it’s come up here again today—they kind of put words into your mouth, I think—that you believe that records were down-

loaded onto USBs and, in their words, “stolen” from the government.

I think you already clarified this, but I think it’s really important to make sure that we understand it: Do you have any evidence to suggest that information was actually downloaded to USBs?

Dr. Ann Cavoukian: No.

Mr. Steven Del Duca: Okay. So I want to go a little bit further, because on June 6 specifically, Mr. Fedeli had this to say: “The privacy commissioner told us two things: Number one, the data was deleted and destroyed and cannot be recovered. But what she said in advance of that was that those data were copied onto a USB key and removed before the copies were deleted and destroyed. So there are USB keys out there that were stolen from Queen’s Park.” That’s what Mr. Fedeli said.

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Interjection.

Mr. Steven Del Duca: That was a direct quote.

In the Legislature, Mr. Leone stated: “The privacy commissioner says deleted documents wiped clean from computers may still exist on USB drives. This is stolen property.”

That’s the inflammatory language that they’ve used, and I’m quoting them.

Are these comments an accurate reflection of what you were trying to say in your report—those direct quotes? I’m wondering about those direct quotes.

Dr. Ann Cavoukian: I don’t think we said that in our report. I also can’t say that things haven’t happened. What I don’t know is if anything was copied or transferred onto other portable devices. I simply would not have the means or the jurisdiction to address that issue.

Mr. Steven Del Duca: Sure, but in the quotes that I’ve provided to you, they weren’t saying, “It is possible that...” They were using you, they were using the authority of your office, and they were claiming that you were making claims that support some of the stuff that they’ve been spewing over the last number of months. I just wanted to make sure it was clear to the committee and to the public that their quotes were not really based on what you said in your report.

Dr. Ann Cavoukian: I don’t think they’re based on comments we’ve made in the report.

Mr. Steven Del Duca: Thank you.

To go a little bit further, Mr. Fedeli has explained that the basis for his complaint to the OPP was this notion that there are USB keys. On June 6, again, he stated, “I phoned the OPP and I said, ‘I’m calling to report a crime.’ They asked, ‘What is the crime?’ I said, ‘A USB key has been stolen from Queen’s Park. There has been a theft here.’” That’s a quote from Mr. Fedeli. He has reiterated this specific point several times.

Here’s another quote from him: “The privacy commissioner has told us—the privacy commissioner has told us—that information was removed from computers, put on a USB disk, taken out of the precinct and then those files destroyed. That is information that has been stolen

from Queen’s Park, and that is why we are calling the OPP in.”

Again, given the fact that you have now confirmed several times here today that your report does not say anything about files specifically downloaded onto USB keys, how do you feel about your report being the basis of these allegations?

Dr. Ann Cavoukian: I think my report speaks for itself.

I want to emphasize that we did not address the issue of USB keys. What I can’t rule out, and I have absolutely no idea if any information was transferred to some other device before deletion—that, I simply can’t comment on because I have no awareness.

The one thing I would like to address at some point—and I don’t know if this is the appropriate time—is what we did find in terms of the deletion of records and the absence of backups. So—

Mr. Steven Del Duca: I appreciate that, and I don’t want to belabour this point, but I think it’s extremely important. I know that whenever I compose something, I write something—for example, Mr. Leone across the way has written lots of stuff in his career, in past careers. It just strikes me that someone like yourself—professional, accomplished, written this report, taken this work very seriously—I want to make sure I understand how you feel about the fact that they have taken your report, they have torqued it beyond all recognition and they have used it to score, I think, fairly cheap political points.

It just strikes me that your report has lots of great recommendations. Premier Wynne and this government have taken those suggestions very seriously, as you have stipulated here today. Instead of focusing on how we can move this forward, work with you, work with your office, work with your report, we have members of the PC caucus repeatedly being quoted in the Legislature and elsewhere saying your report says something that it clearly doesn’t say. How does that make you feel about the work that you’ve put into this?

Dr. Ann Cavoukian: I’m very proud of the work that we’ve done on this report, and I think the report speaks for itself.

Mr. Steven Del Duca: But it’s clear that they don’t speak for the report when they’re torquing it out of all recognition, the way that they’ve been doing over the last number of days and weeks. It’s pretty clear that when they talk the way they are about what they’re doing on this specific issue within your report, they’re, frankly, making it up as they go along. I think that’s fair to say. I’m not even asking a question. I’m just making a statement. I think it’s fairly obvious to everyone in this room.

I want to talk a little bit about backup tapes. The opposition has also misrepresented, I think, what you said in your report about how the backup tapes work for emails, and I know that you might want to get into a little bit more of this at some point, if we have time.

On June 18, Mr. Fedeli told CP24—and I’m going to quote him again; he’s a very quotable guy—“The privacy

commissioner told us the backups were destroyed. That's a coordinated effort to do that."

He brought up this allegation several times in committee last week as well, in questioning a former executive assistant to the chief of staff. Mr. Fedeli asked her, "Did you order the backup tapes be destroyed?"

My understanding from your report is that the backup system—you alluded to this a little bit earlier—is configured by the Ministry of Government Services IT so that daily snapshots of emails are backed up to tape for one day. Those daily tapes are put into a pool of tapes which are overwritten at the end of the next day. There's also a backup onto tape on a monthly basis, which are held for one year or thereabouts and then returned to a pool of tapes for overwriting.

As for the Premier's office, backup tapes are maintained for 10 days and then put into a pool to be overwritten. Your report states that these backup tapes are overwritten as part of the usual backup system.

Is that an accurate summary of what you've learned in terms of how—

Dr. Ann Cavoukian: Yes. That's very good.

Mr. Steven Del Duca: So it is.

Dr. Ann Cavoukian: That's an accurate reflection.

Mr. Steven Del Duca: So do you have any evidence to suggest that backup tapes were "ordered destroyed," as the opposition has alleged?

Dr. Ann Cavoukian: No, I do not. What people have to understand is that the massive volume of information that takes place in terms of the provincial government has—not caused them; has led them to use this kind of system called—

The Chair (Mr. Shafiq Qaadri): One minute.

Dr. Ann Cavoukian: —a RAID server that does not produce backup tapes on any kind of frequent basis that are then archived and can be accessed in any reliable manner. We had an independent computer forensic consultant who assisted us, because we always want to trust but verify what we're being told by IT departments. They verified that it's just simply not possible to retrieve any deleted information over time, especially dating back a year or so.

Mr. Steven Del Duca: We're almost out of time, but I just want to make sure that it's clear, as we close off this section, that you found no evidence of something being ordered destroyed as part of a normal process.

Dr. Ann Cavoukian: No. It was a matter of routine destruction and the absence of backup tapes.

Mr. Steven Del Duca: But nothing ordered destroyed as, again, they've alleged.

Dr. Ann Cavoukian: Correct.

Mr. Steven Del Duca: So it's just simply the way the system always works.

Dr. Ann Cavoukian: That's correct.

Mr. Steven Del Duca: Fantastic. Thanks very much, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. To Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much.

I've got a couple of quick questions for you before I get into this. Dr. Cavoukian, is important data still missing?

Dr. Ann Cavoukian: The emails of the individuals that we interviewed are missing; they're gone.

Mr. Victor Fedeli: So data is clearly missing.

Dr. Ann Cavoukian: Yes.

Mr. Victor Fedeli: A quick question: Is a USB key a portable electronic device?

Dr. Ann Cavoukian: Yes.

Mr. Victor Fedeli: Thank you very much. I just want you to know how pleased I am that the OPP agreed with that and have followed their investigation through the routine destruction—I guess you don't need an order to destroy when it becomes routine; it's your normal way of proceeding in government. It's also fairly easy for Premier Wynne to now appear transparent when the evidence has already been destroyed.

A senior staffer in Premier Wynne's office testified here last week that backups were kept when a drive was purged. Is that true or accurate?

Dr. Ann Cavoukian: Let me just take a guess on what I think that is, and Brian, you can help me.

Mr. Victor Fedeli: Please, because I don't know what that is either.

Dr. Ann Cavoukian: When you have transitory staff or staff transitioning from one government to another, it would not be unusual for their devices to have whatever is contained on them moved onto a server, which then, I think, goes to the secretary of cabinet, and then that device wiped clean in order to give it to the next staff person.

Can you add anything?

Mr. Brian Beamish: I read the testimony, and I'm not quite clear—I think there were a couple of issues that were unclear. I took her testimony to suggest that she thought there were backup tapes that were used for records-retention purposes. As the commissioner has explained, that's not the case. It was very clear to us that the backup system that MGS has put in place is for disaster recovery; it's not an archive system. I think she may have assumed that there were backup tapes that could retrieve these emails when, in fact, our information is that that's not the case.

Dr. Ann Cavoukian: And it's a common assumption.

Mr. Victor Fedeli: Do you know where that information is kept?

Mr. Brian Beamish: As the system is currently configured, if an email is deleted and it doesn't show up on the daily backup tape, then it's not kept anywhere. Someone would have to take the positive step of saving it or archiving it themselves.

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Mr. Victor Fedeli: So how is it possible for anybody to circumvent this? You talked about that in your report, about having these accounts purged. Is this normal activity or routine destruction, as we heard it, or are there other methods employed?

On page 24, when we talked about the portable electronic devices—I refer to them as USB keys, the most popular portable electronic device. This material, this information that's not available anymore: You suggest, Dr. Cavoukian, that your industry experts say that we'll never be able to recover that. We're getting calls, of course, hourly, daily, weekly now that say, "Oh, come on." I know you get the same kind of thing; right? Will you go on the record and talk about that, please, because nobody believes us when we tell them that evidence has been destroyed.

Dr. Ann Cavoukian: I totally understand that because in writing this report and with my team, I couldn't believe it either. I kept saying to them, "How is that possible?" I thought you could never truly delete anything. Apparently you can.

Having said that, I would love to be proven wrong, and I invite the OPP and many consultants we've talked to to please prove me wrong. I invite their intervention.

From what I understand, the most you could get—let's say you bring in the OPP department that is dedicated to doing these kinds of activities. From what I understand, with the RAID kind of server that they had, the most you could find is remnants, digital little dust bunnies, if you will, but that they couldn't be associated with the personally identifiable individuals whom you want to link them to. I hope I'm wrong.

Mr. Victor Fedeli: Look: Every computer expert who calls us says that it's got to be found. We obviously have great faith in your report—

Dr. Ann Cavoukian: And the only thing I could suggest next time they call: Tell them it's a RAID server, because whenever we've said "a RAID server," then all the people call me and they go, "Oh, whoa. Hands off. I'm not going to go near that one." That's the only thing I would suggest you ask.

Mr. Victor Fedeli: Yes, okay. But these emails, then, would be routinely destroyed. This is something that didn't happen by accident, those emails?

Dr. Ann Cavoukian: That's correct.

Mr. Victor Fedeli: And only gas plant emails have been destroyed, that we've found—

Dr. Ann Cavoukian: There are two questions here. The emails of the two individuals who destroyed all of their emails: That is questionable. The activities of the IT staff in the tapes being overwritten on a daily basis the way that we've described: That is routine, and that takes place in other organizations that employ a RAID server and that have the massive volume of emails that the provincial government has.

Mr. Victor Fedeli: The fact that we're sitting here nine months later and we still don't know how much this scandal cost and we still don't know who ordered the cover-up, other than hearing from one ministry representative who told us—OPA representatives who told us they were ordered to remove documents.

I think what we've learned here today is that this is a Liberal government-orchestrated cover-up of the highest

degree, in my opinion. I think we've seen the law being broken and an attempt to cover it up.

I'm going to ask my colleague Rob Leone if he has a couple of questions for you in the few minutes we have remaining.

Mr. Rob Leone: How much time?

The Chair (Mr. Shafiq Qaadri): Four minutes left.

Mr. Rob Leone: In your report you state there is a Premier's Office Records Retention Schedule. The normal practice of the government, when they're trying to change and transition and people are coming and going from office, is to follow this retention schedule, which means that all the information that's on a computer gets transferred to a portable electronic device and then the computer gets wiped.

Dr. Ann Cavoukian: Yes.

Mr. Rob Leone: So one would infer, given that protocol, that either these portable electronic devices exist and have information that might be pertinent to us—whether they've also been destroyed. What would you say to that?

Mr. Brian Beamish: When I read the Premier's office records retention schedule and what should happen on transition, I read that as contemplating a transition from—if I can put it this way—one political party to another; you have a brand new government coming in. That wasn't the case back in January and February. You had a Premier coming in who was of the same political party. If you're changing political parties, it's understandable that policy files, stakeholder files, correspondence, that type of thing, would not be left behind for the incoming administration.

Our understanding was that because there was some consistency in terms of the government, things like policy files were in fact left in place. They weren't transitioned onto a mobile device and sent to the archives.

Mr. Rob Leone: Everyone in government, everyone in the province of Ontario, basically, who is watching Ontario politics knew last fall, or the fall of 2012, that myself and others in the Legislature were moving contempt on the government for failure to produce documents. That occurred last September, when that was debated, and a motion passed, followed by a subsequent prorogation of the Legislature. This was a hot button issue. It was an issue that the opposition clearly was committed to investigating. Does the timing appear coincidental that prior to the resumption of this Legislature we have now deletion, purging of, destruction of potential evidence that would be pertinent to this committee? Does that timing factor into any of your analysis?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Brian Beamish: What I would comment on, and as the commissioner notes in her report, during that transition period, as the report says, the MGS IT group did take immediate steps to secure the emails during transition, so presumably those email accounts from that transition period are still around and available for scrutiny.

Mr. Rob Leone: I hope the OPP find them. Do we have all the documents in our hands that are pertinent to the investigation of this committee, according to your investigation of the destruction of emails?

Dr. Ann Cavoukian: Everything that we unearthed during the course of our investigation you have available. We went to great lengths to try to secure as much information as possible and we'll be sharing that with the OPP during their investigation.

Mr. Rob Leone: In the event that not all documentation has been provided—you've talked about this—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Leone. Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Dr. Cavoukian. Chris Morley was pretty strong in his testimony, saying that, in fact, your comments didn't apply to him. I would just like to know if you saw a big difference in the administration of record-keeping from the Morley regime to the Livingston regime.

Dr. Ann Cavoukian: I would have to say no, but in fairness to Mr. Morley, I don't know exactly what he was referring to in saying that my comments didn't apply to him. Perhaps he meant I didn't interview him, which is correct.

Mr. Peter Tabuns: He did say that, yes.

Dr. Ann Cavoukian: And that is absolutely correct; I did not interview Mr. Morley. We felt it was sufficient to interview Mr. Livingston as the former chief of staff for the former Premier. Perhaps it was the case that Mr. Morley had a greater familiarity with the Archives and Recordkeeping Act because he'd been around much longer than Mr. Livingston had. Maybe that's what he was referencing. It's not clear to me. I don't know what to say beyond that.

Mr. Peter Tabuns: But in your research you didn't see night and day in terms of record-keeping between one and the other.

Dr. Ann Cavoukian: No.

Mr. Peter Tabuns: No. Okay.

Mr. Brian Beamish: Although I'm not sure that was the focus of—as the commissioner said, we didn't speak to Mr. Morley, so it would be maybe unfair to comment on what his practices were. Our focus really was on the individuals that are in the report.

Mr. Peter Tabuns: Okay. Do you believe there was a failure to document government and political decision-making in the matter of the gas plants?

Dr. Ann Cavoukian: Yes.

Mr. Peter Tabuns: I was guessing from the nodding of the head that that's where you were going.

Do you believe that the secretary of cabinet was accurate when he said that political staff knew the difference between records that should be kept and not kept, even if they weren't perhaps trained on every comma and period in the act?

Dr. Ann Cavoukian: I do. Now, it's clear that the political staff wouldn't be familiar with the details associated with the Archives and Recordkeeping Act. People would think, "It's boring. I don't care about the minutiae;

it doesn't matter," things of that nature. Having said that, taking the secretary's comments, I believe that they certainly had a general understanding that there are some records relating to government activities that must be retained.

Mr. Peter Tabuns: Although training would reinforce, in people's minds, the necessity to act in a certain way, at the heart of it here, we're not looking at a failure of training.

Dr. Ann Cavoukian: I think it would depend on how deep you go in terms of the training. At a high level, I think there certainly should have been an understanding of, "You have to keep some records."

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Mr. Peter Tabuns: Some. One, two, three, maybe four in your years here.

It seems to me, and I think it would to you and to Mr. Wallace, there's a certain level of simple common sense, of keeping substantial records and not worrying about the, "Can I get you a coffee or go to lunch with you?"

Dr. Ann Cavoukian: Of course.

Mr. Peter Tabuns: We only learned about the deleted accounts because we filed a freedom-of-information request. Is there any oversight of record retention? Is there anyone who's looking around and saying, "Hey, we're getting gaps in record-keeping here"?

Dr. Ann Cavoukian: Generally, you mean?

Mr. Peter Tabuns: Yes.

Dr. Ann Cavoukian: I would think the archivist. Brian? That's a good question. I'm just conferring with Mr. Beamish. We don't do that.

Mr. Brian Beamish: We don't do that, although I will point out that the commissioner made some recommendations in her report that were an attempt to give her some jurisdiction to review record retention policies, or the failure to keep records. I think those were really important recommendations that she had, which would give us some type of oversight in that area so if people felt that records had been improperly deleted, we would be able to take some action. But currently, as you know, we don't have any particular jurisdiction under the Archives and Recordkeeping Act.

Dr. Ann Cavoukian: It doesn't extend to records retention.

Mr. Peter Tabuns: Okay. In terms of records retention, you tell us about this particular array of servers that Ontario uses, the RAID.

Dr. Ann Cavoukian: Yes.

Mr. Peter Tabuns: Is this a system that's especially problematic in terms of retaining records? Is this a standard approach to retaining records? I ask in part because some of my colleagues at the city of Toronto have found that their emails have been retained in perpetuity.

Dr. Ann Cavoukian: Well, because the city of Toronto uses a different system that does archive all emails, deleted or otherwise; they have a backup system. But they do not have the volume of emails that the province of Ontario has. And so from what we understand in terms

of our investigation, the RAID kind of server is not unusual. It's something that the specialists we spoke to were very familiar with. They said it was not an uncommon type of server to be employed in the context of massive amounts of email and that you would not archive that massive volume, that number of emails, for backup purposes. So that was not considered to be unusual. Now, whether it's desirable or not, that's another question.

But also, if you changed to a backup system that did archive, then you would be incurring significant costs, and all of that would have to be debated.

Mr. Peter Tabuns: Okay. One thing, and you mentioned this earlier: When I look at the way I handle my emails in the time I have, I just save everything because it's easiest.

Dr. Ann Cavoukian: I know. Me too.

Mr. Peter Tabuns: It took a lot of time to wipe out all these records.

Dr. Ann Cavoukian: You know what's interesting? Since doing this investigation, I've been trying to be a little more responsible about deleting my emails.

Laughter.

Dr. Ann Cavoukian: No, the ones I should delete. I ask lots of people to do things for me and they respond, "Will do." Of course, I could just delete those. I just can't delete all of them on a daily basis, let alone a weekly basis, because it takes a lot of time, and that's what struck me. You have to turn your mind to it. Even though it's one second to delete, you still have to turn your mind to it, go and do it.

Mr. Peter Tabuns: Some people actually seemed to be very rigorous in making sure that there was nothing left, because it takes a lot of time to be that good.

Dr. Ann Cavoukian: It does for me.

Mr. Peter Tabuns: I would say you're fairly normal in these matters.

We found it extraordinary that not only were there no emails from Jamison Steeve, Sean Mullin, Chris Morley; Craig MacLennan's were gone. We have no materials from Dalton McGuinty in emails or PINs, none from Chris Bentley. He referred that he didn't have a government email account, but that didn't exclude other email accounts that he might have communicated with. I mean, this complete lack of records has huge implications for a culture of transparency. Do you have comment on that, or should we just take your report as the comment on that?

Dr. Ann Cavoukian: Just allow me to repeat that transparency and openness are absolutely essential to maintaining our free and democratic process. I know that may sound very high-level, but I can't emphasize it enough. We need to have scrutiny of government activities, and in order for that to happen, the public has to have a right of access under the freedom-of-information act. They will be denied that right of access unless there are government records for them to access, so I can't emphasize the importance of retention of government-related activities—I can't emphasize that enough.

Mr. Peter Tabuns: What do you think about the fact, then, that we have no documents from those we were told were the decision-makers—the Minister of Energy and the Premier—when it came to cancelling these plants?

Dr. Ann Cavoukian: Again, I have no jurisdiction in this area because it doesn't extend to that matter, but my guess would be that everyone has staff, and you can understand that the ministers are very busy and running around doing things, and they probably would have expected their staff to take care of these matters and retain records that needed to be retained.

Mr. Peter Tabuns: Mr. Schein?

Mr. Jonah Schein: You've raised some issues about the transition—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jonah Schein: —between Premier McGuinty and Premier Wynne's office. Can you elaborate further on what you've seen in that transition process?

Dr. Ann Cavoukian: Brian—the transition process? I'm familiar with what's happening with Premier Wynne's office, and she has been very transparent with us in terms of records that she has in her possession, or her government's possession.

Mr. Brian Beamish: Yes. As the commissioner said, in terms of our recommendations so far, the response has been positive. We're optimistic.

Mr. Jonah Schein: Shouldn't it have been obvious to her that there are missing documents, though, during that transition process?

Dr. Ann Cavoukian: I don't know how to answer that. It's not something we address in our report, but it's not clear to me how she would have been aware of information that was missing and deleted. As I said, we did not address that issue.

Mr. Jonah Schein: But there's absolutely nothing on this file in that transition—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Schein. To Mr. Del Duca.

Mr. Steven Del Duca: Thank you very much, Mr. Chair. I'd like to begin my last round of questions talking a little bit about duplicate records. Your report also does discuss, of course, duplicate records, which are defined as copies of records kept by other offices or branches within the ministry or the government. You state that, "If staff in either the ministers' offices or the Premier's office determined that another government branch or department was retaining the records, there would be no requirement under these records retention policies for the minister's office or the Premier's office to retain additional copies."

You go on to say on page 27 that the "program owner" is responsible for maintaining business records relating to their specific initiatives...."

From my experience—my short experience—over the last few months as a parliamentary assistant, I know that it's customary that the ministry provides briefing decks and policy options for the vast majority of the meetings that I've attended. Similarly, a cabinet minister and their staff would know that Cabinet Office would retain all

documents prepared for and presented at cabinet meetings. So in those instances, I would imagine that it would be up to the program owner—in these two examples, the ministry and the Cabinet Office—to retain these documents. The copies that I would have in my possession would be surplus duplicates. Is that right?

Mr. Brian Beamish: Yes, to the extent that there is a program owner, you are correct: There needs to be a copy retained, and the records retention schedules provide that that can be done by someone within the ministry.

Mr. Steven Del Duca: Okay. Great. I also want to talk a little bit about verbal communication. Specifically with respect to your comments surrounding verbal communications in the report, some have interpreted it to mean, “There is something wrong with in-person discussions or the verbal exchange of ideas amongst politicians and between their staff.” I know that in the earlier round, you did mention that that’s not the case. Specifically, in a letter to the *Globe and Mail*, you offered some important clarification. You stated, “It is obvious that I would never suggest politicians should be required ‘to disclose every passing thought.’ Such a proposition would be ludicrous.” I think you said that earlier today here: ludicrous.

“In fact, I often encourage my own staff,” as you said earlier, “to stop sending everything via email and have more discussions in person.” Can you expand a little bit on that?

Dr. Ann Cavoukian: Certainly. I think it’s the view that somehow this is a zero-sum game, that you can either have verbal communication or written communication, and somehow you’re not going to have an interplay. That’s what is ludicrous. Of course you must have verbal communications with your staff, with your team. It grows ideas, it generates new thoughts and it’s a very, I think, healthy environment to have within an office. But that is not to suggest that that is to the exclusion of having some written records associated with that which forms the content of the verbal communications. You must have both. It has to be a positive sum, not a zero-sum outcome.

Mr. Steven Del Duca: No, and I appreciate that. I think, to reiterate what I mentioned in the very first question that I had for you today, this committee has actually received tens and tens of thousands of records from the current and the former Premier’s office: emails, handwritten notes, documents, including from some of the people who have been talked about here today—Mr. Morley, Mr. Steeve, Mr. Mullin, Mr. Livingston, Mr. MacLennan; others. In fact, as this committee well knows, the accounts of around 52 former staff have been reviewed and records have been provided to this committee.

Understanding completely that it is a balance between the verbal communications and making sure that certain records are kept, I just wanted to make sure it was clearly understood by this committee that there is nothing wrong with an approach to having in-person conversations; that not every single thing that is uttered between a politician and staffer, or staff to staff, needs to be retained.

Dr. Ann Cavoukian: No, I totally agree with you. In fact, I’m delighted that you actually read my letter to the editor of the *Globe*. I didn’t think anyone read those, so I’m so happy to hear that.

Mr. Steven Del Duca: I’m not exactly busy styling my hair, so it’s okay. I have a little bit of extra time.

With respect to FIPPA, and the exemptions that exist in FIPPA, I’d like to speak a little bit more generally about FIPPA and, again, some of the exemptions that are contained in that piece of legislation. There are a number of exclusions contained in that act with respect to documents to be disclosed in response to an FOI request, and I’m particularly interested in “Cabinet records,” which I think is section 12; records under the “Economic and other interests of Ontario” category, section 18; and “Solicitor-client privilege” materials, section 19, I think. Can you provide this committee with some insight as to why those exemptions exist and why they are appropriate?

Dr. Ann Cavoukian: I’ll ask Mr. Beamish to join me in a moment. I think those sections are very, very important because governments have to be able to engage in policy-related discussions, blue-sky thinking. You need to explore options that may start off being wild and much broader than you would go, and then you dilute them into the actual content of what the decision is. So I think there was an understanding that there had to be some protection of that information.

Brian?

Mr. Brian Beamish: Yes. As the commissioner points out, there’s a recognition that there should be a zone of discussion for government, particularly cabinet. In terms of our report, though, it’s important to note that there’s a distinction between the duty to retain records and a duty to disclose those records, subject to an FOI request. Simply because something may fall within section 12 or 18 or 19, “Solicitor-client privilege,” doesn’t—that means that you don’t have to disclose it. That’s a separate question from whether you need to retain it.

Mr. Steven Del Duca: Okay. The Premier has been pretty clear, I think, on this: Government business should be conducted using government property, and government business is subject to FOI no matter where it takes place. That said, MPPs and certain staff do exercise legislative functions that can and should take place using Legislative Assembly email accounts.

You would have to agree, I think, that there are—and you kind of talked about this a bit earlier—definitely legitimate reasons to use these legislative resources, such as caucus deliberations and constituency and political matters. I think that’s why FIPPA specifies that it doesn’t apply to the Legislative Assembly. Is that right?

Dr. Ann Cavoukian: I agree. Yes.

Mr. Steven Del Duca: Okay. I think that’s it, in terms of my questions for today. I just want to say—I know others have said it before—thank you very much for your report, for being here today. I think we all look forward to continuing having this conversation, so thanks very much for being here.

Dr. Ann Cavoukian: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Thank you, commissioners.

The committee is recessed till 1 p.m.

The committee recessed from 1213 to 1259.

MR. DALTON MCGUINTY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the Standing Committee on Justice Policy to order once again. As you know, we heard from the Information and Privacy Commissioner. I would now like to welcome the former MPP for the region of Ottawa South, the former Premier of the province of Ontario, the honourable Dalton McGuinty. Mr. McGuinty, I invite you to be sworn in by our Clerk.

The Clerk of the Committee (Ms. Tamara Pomanski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Dalton McGuinty: I do.

Le Président (M. Shafiq Qaadri): Merci, monsieur McGuinty. Comme vous le savez, vous avez cinq minutes pour vos remarques introductoires. Je vous invite à commencer maintenant.

Mr. Dalton McGuinty: Merci beaucoup, monsieur le Président.

Good afternoon to all of you. Thank you so much for giving me the opportunity to speak to you yet again.

I have made it clear that I believe my government got the decision to locate gas plants in Oakville and Mississauga wrong. We got 17 other gas plants right, but we most assuredly got these two wrong. My government's decision to locate very large gas plants next to schools and homes, on sites where our new law prevented us from locating even a single emissions-free wind turbine, was wrong. People in those communities told us so, the opposition told us so, and we acted. I regret that we did not listen to the communities and the opposition sooner, I regret that costs are as high as they are, but I don't regret the decision to relocate those plants. It was the right thing to do.

Our job in government is always to get the big things right, and we did that, in health care, in education, in the environment and in the economy. Had we not gotten those big things right, this committee, or another like it, would rightly be taking the government to task for it. Instead, this committee is focusing on the relocation of two gas plants, a decision for which I accept responsibility.

I welcome the report from the Information and Privacy Commissioner. In 2006, my government demonstrated leadership by passing the Archives and Recordkeeping Act, but as the commissioner pointed out, my government did not do enough to ensure staff were fully trained in the responsibilities created under that new law. I am pleased that Premier Wynne is committed to ensuring that staff receive the necessary training, but going for-

ward, in my opinion, training won't be enough. The rules here are confusing, and they cry out for clarity.

What to destroy and what to preserve is, today, a matter of judgment. There is no comprehensive, exhaustive list for you and your staffs to look to which tells you precisely when to preserve and when to destroy. What one of you may consider as a record that is transitory, personal or political and therefore can and even must be destroyed, another of you may insist is a public record and therefore must be preserved. It's a matter of judgment guided by some very confusing rules, including the 99 rules authorizing destruction that this committee learned about for the very first time just last week.

I believe that this committee also recently learned about the existence of a Cabinet Office directive, one issued by the civil service, requiring that emails be purged when staff leave. As I indicated in my response to Ms. Cavoukian's report, we need clarity here.

Ms. Cavoukian's report also raises the issue of mandating the documentation of verbal communications in government. I have a real concern with such a proposed legislative duty. Opposition committee members have had a hard time accepting a fact of governments in Canada, and probably many more around the world: When it comes to communications, much of the practice of government by politicians is verbal in nature. This has been government practice for a long, long time. The Bureaucracy prepares written materials for the politicians to consider, the politicians give mostly verbal consideration to these written materials, and the politicians' final decisions are duly recorded.

This is not to say that some of the political discussions inside government prior to a final decision are not being recorded. The very fact that this committee has caused the review of over one million documents and has received over 130,000 documents, including 30,000 from the Premier's office, speaks eloquently to the reality that much is being recorded along the way to minuted cabinet decisions.

However, much is left unrecorded, and, in my opinion, that's the way it should be. Politicians and political staff need to be free to kick around ideas—good ones and bad ones, wise ones and foolish ones. They need to be able to think through their decisions out loud before they make them. They need to be able to go through that often messy exercise that, at its best, leads to the creation of good public policy.

In conclusion, I thank committee members for your work. I look forward to your constructive advice and recommendations, including advice, hopefully, on how we can do a better job of locating gas plants. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McGuinty. I commend you on your precision timing. Mr. Tabuns?

Mr. Peter Tabuns: Thank you for being here, Mr. McGuinty.

Mr. Dalton McGuinty: Yes, sir.

Mr. Peter Tabuns: Your government passed the Archives and Recordkeeping Act in 2006. Why didn't you follow it?

Mr. Dalton McGuinty: Let me tell you a little bit about what I focused on as Premier, and I know this will not come as a surprise to you, but I think it bears some illustration.

Mr. Peter Tabuns: Mr. McGuinty, I understand that there are a lot of things that you could talk to us about, but you, in fact, put a law into place which your government, your office didn't follow. Why didn't it follow your law?

Mr. Dalton McGuinty: I moved on to the next thing. I moved on to the next thing.

Mr. Peter Tabuns: So when you pass a law, it's gone?

Mr. Dalton McGuinty: I would be focused heavily on: What is it that we need to do to ensure that test scores continue to rise in the province of Ontario? What is it that we need to do to ensure that we create more jobs in the province of Ontario? What is it we need to do to get wait times down in the province of Ontario? So I devoted very little attention to that particular piece of legislation. To my knowledge, I have never been asked about this legislation, either in question period or by way of some kind of an inquiry from any member of the opposition. I can tell you that I have never heard from any secretary of the cabinet, and I've had the privilege of working with three. I have never heard from the Information and Privacy Commissioner about any dereliction of duty on the part of my office or any ministry with respect to this particular piece of legislation. It has been something that has been to the side. I've been focused on the immediate responsibilities of the Premier.

Mr. Peter Tabuns: So if a law is not an immediate responsibility and we're not asking a question in question period, then the law is irrelevant. Is that what you've just said to us? Because your office ignored it.

Mr. Dalton McGuinty: What I'm saying is, I count on my staff to do the necessary things with respect to new legislation. I would also, just to demonstrate how confusing the area is—we've got a Cabinet Office directive, a protocol in place, issued by the civil service, that says that when somebody leaves the office, you've got to delete all their emails. That's a Cabinet Office directive. That is obviously in conflict with some other rules over here that would be more specific to the archives legislation. So there's a lot of confusion out there, and I think one of the things that this committee can do to be helpful is to help us develop a process by which we can clarify what those rules might be.

Mr. Peter Tabuns: I can tell you that today Dr. Cavoukian and, previously, Peter Wallace, cabinet secretary, were pretty clear that people could and did understand, on a common-sense basis, that substantial documents were to be saved and others could be deleted. Your staff didn't do that. Your staff were deleting email accounts. They were wiping BlackBerry PINs. Why?

Mr. Dalton McGuinty: First of all, I disagree with the statement contained in the preface to your question, because Peter Wallace, the secretary of cabinet, said the following: "I don't know if political staff, or indeed many public service staff, understand the parameters and details associated with the archives act.... That is a little bit arcane." He said that. That's an admission from the head of the public service that the public service does not really, truly, fully understand the implications associated with the archives act.

I can say as well, Mr. Tabuns, that that applies to the political class. You would be very familiar with this. Let's draw this distinction, because I think it's important. Think of the integrity legislation and the Integrity Commissioner's office. That Integrity Commissioner meets with every one of us on an annual basis, and if anybody has any kind of a challenge, they can speak to her over the phone, get her on the line, get her to intervene.

I have never met with the Information and Privacy Commissioner regarding the archives act. I don't believe any of you have ever sat down with the Information and Privacy Commissioner in the province of Ontario and discussed the archives act. At no time has any secretary to the cabinet—I've had the pleasure of working with three—raised this issue with me. You might imagine that the Premier's day is pretty full, so I don't give much thought to the archives act. I don't give much thought to the management of emails, but I do give thought to creating jobs. I do give thought to ensuring we improve the quality of health care and I do give a lot of thought to improving the quality of our education. That's what I focused on.

Mr. Peter Tabuns: Mr. McGuinty, you're eating up the clock; that's what you're doing.

The privacy commissioner's report notes that the secretary of cabinet "indicated that political staff were fully aware of their obligations in this area."

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I sat in this room and questioned Peter Wallace about this matter, as well. People may not know every note in the Archives and Recordkeeping Act but they certainly know they have a responsibility to retain records, and yet your staff were wiping out their emails, clearing the decks. Chris Morley retained records on your fight with the teachers, on the Samsung deal, on your budget changes, but he kept no records on this deal, this gas plant scandal, which was consuming this Legislature. You had a law in place, and you and your staff were not keeping that law. Your office was not keeping that law. What were you trying to cover up?

Mr. Dalton McGuinty: Obviously I reject the assertion contained in the final question in that statement. But I think if you take a close look at the report prepared by the Information and Privacy Commissioner, one of her findings specifically states that my staff was not aware of the law. When she talks about Mr. Livingston on a couple of counts, she specifically says—and I'll just get that particular passage for you—that the CIO, which I assume stands for the chief information officer, "stated

that at no time did he ever believe that the inquiries from Livingston regarding the most effective way to 'wipe clean' the computers on transition were being made for an improper purpose."

She goes on to say, "Information provided to my office by Livingston, the secretary of cabinet, 'the executive director of policy in the...Premier's office, and the CIO was consistent in one regard—none of these individuals had any specific knowledge or information about the inappropriate deletion of electronic records occurring—'"

Mr. Peter Tabuns: But both she and Peter Wallace previously—

Mr. Dalton McGuinty: I think we need to be honest about the absence of a broad understanding, both in the public service and in the political class, when it came to the implications and the new responsibilities to be assumed under the new legislation. I think that's a fair assessment and—

Mr. Peter Tabuns: Actually, I don't think it is a fair assessment.

Mr. Dalton McGuinty: —I'm confident the Information and Privacy Commissioner came to that conclusion.

Mr. Peter Tabuns: I actually have had the opportunity to read through many thousands of emails from civil servants who seem to retain almost everything. They could have deleted the odd comment, but in fact, they seem to retain almost everything. It takes a lot of work to go around and delete. In fact, your chief of staff, Mr. Livingston, wiped out everything. The former chief of staff, Mr. Morley, seemed to wipe out everything to do with the gas plants. There isn't a single document from any of those gentlemen that will back up your assertion that you made a decision around the gas plants for environmental reasons. They took away your ability to declare innocence and they were warned by the cabinet secretary that that's what would happen if all the emails were deleted. Nonetheless, records were destroyed. What was your office trying to cover up?

Mr. Dalton McGuinty: It's been said that all records have been destroyed. That's not true. You've received 130,000 records so far. I don't know how many more you are in pursuit of at this point in time, but something tells me you're going to get a lot more non-existent records—130,000, and 30,000 of which came from the Premier's office.

In addition to that, at the last time you sat, last week, you were quoting emails that had been recorded by Chris Morley, the former chief of staff. You said that he has destroyed all his emails. How could you possibly be quoting from those at the same time?

I know that Jamison Steeve and Sean Mullin prepared notes in connection with meetings they had with Trans-Canada. Those notes were made available to this committee.

When it comes to cabinet documents, I'm not sure if you understand—you made a request for cabinet documents. Those are virtually sacred in the context of confi-

dentiality. And Peter Wallace phoned me and said, "You were given official custody of cabinet documents. The committee's asking for them." I said, "Give them whatever they're asking for."

So you had cabinet documents—

Mr. Peter Tabuns: Mr. McGuinty, you could have given us phone books—

Mr. Dalton McGuinty: —130,000 records so far.

Mr. Peter Tabuns: You can give us phone books, you can give us encyclopedias, you can give us databases, but if the key correspondence by your key staff was destroyed—and so you had no responsive records in your office. I consider that those key documents are gone, and Peter Wallace warned your chief of staff about that.

What was your involvement or the involvement in your office in the decision to withhold documents from the Standing Committee on Estimates?

Mr. Dalton McGuinty: I took a good, long hard look at all of the testimony that you've heard. On several occasions, senior bureaucrats have apologized for their shortcomings with respect to producing documents, and the secretary of cabinet himself has said that there was never any political intervention in the production of those documents. But here's what we need to do, I believe, going forward. You need to understand that what you put in place—an unreasonable deadline, and to ask the civil service to comply with that deadline, and to ask them to produce tens of thousands of records—that is not sensible. It's a recipe for a disaster. So hence, you had three productions, when, if you had said, "Look, why don't we use date number 1 for the first tranche, date number 2 for the second tranche, date number 3 for the third tranche," and so forth, as they do in commercial discoveries and disclosures, for example—that's just a sensible, responsible way to do it.

Everybody you've heard from before this committee has said that it was just human error and that the civil service took responsibility for that. You need to stop looking through that partisan lens and recognize that the civil service did the very best that they could.

Mr. Peter Tabuns: I actually think that the civil service did try very hard, but you were in the House when all of us noticed that the documents we'd been given had pages missing. In fact, it was the Ontario Power Authority, watching us in the House, who came to the conclusion that they had been given incorrect instructions on how to pass documents on to us.

Your Minister of Energy: His office gave not a single document. Are you aware that withholding documents from a committee is a breach of a member's privilege?

Mr. Dalton McGuinty: I know that you've received over 130,000 documents. You say that the OPA was misguided somehow?

Mr. Peter Tabuns: Yes. You could have checked their testimony.

Mr. Dalton McGuinty: We've all heard about this witness, but I like to rely on the cabinet secretary. He said he couldn't come to any conclusion that anything

untoward or anything wrong had happened. I think you need to go with the cabinet secretary. You need to go with the non-partisan in coming to that conclusion, whether it has to do with this production of documents that took place over time, whether there was any kind of political intervention in the production of those documents; I think you need to rely on the public service, and they've given you the straight goods on this stuff.

Mr. Peter Tabuns: I actually did get a chance to ask the OPA, and they concluded, on the basis of listening to the questions we were putting in the House, that documents hadn't been turned over that should have been turned over.

But I have a second question for you: Whose email is djpm@liberal.ola.org?

Mr. Dalton McGuinty: That was mine.

Mr. Peter Tabuns: Okay. On May 7, under oath, you said, "I can tell you again that in my office, for example, I did not have an office computer; I did not use a government email. My interaction overwhelmingly was verbal in nature with my staff. It was, I'd get on the phone, talk to my assistant, bring some people in, let's talk about this right now"—did you use that email or not?

Mr. Dalton McGuinty: I did.

Mr. Peter Tabuns: And in those emails, did you touch on this matter?

Mr. Dalton McGuinty: Not that I can recall. Let me tell you again about my practice of business as Premier. At the end of the day I would be provided with a big file containing many documents, generally produced by Cabinet Office or ministry offices or consisting of policy notes prepared by my own office. These are all—I know you understand this now—documents not generated by me but by others, and hence, when I receive them, they are duplicates. So I review those documents, I take them back to the office the following day, and they do whatever they do with them; I didn't look into that.

I did have an email: djpm@liberal.ola.org. I used it predominantly for political matters and for exchanges with my own kids. That was the only email address that I was using. I didn't have one separate to that.

I did a lot of political business with that as well, related to the party. I may have, at some point along the way, received an email connected to gas plants, but it would not be substantive in nature. It may be along the lines of, "Minister Duguid is going to make a statement tomorrow. Here's his statement. Here's the release that we're going to be putting out on this." "You need to be present for this," somewhere else. But overwhelmingly, the nature of my business, when it came to the gas plant or anything else, was verbal in nature.

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Mr. Peter Tabuns: Did you have a BlackBerry?

Mr. Dalton McGuinty: I did on two occasions. One, at the beginning of my first mandate. I thought, as Minister of Research and Innovation, that I should have a BlackBerry; then I stopped using one. And at the time, I was only using it, frankly, as a telephone. And more recently, I acquired a BlackBerry.

Mr. Peter Tabuns: When you say "more recently," in the period in which the gas plant scandals were occurring?

Mr. Dalton McGuinty: In the period during which we were working hand in hand to honour our campaign commitments related to the relocation of gas plants, yes.

Mr. Peter Tabuns: To suggest for a moment that we were working hand in hand is a fair chunk of chutzpah. Nonetheless, did you use PINs and SMS?

Mr. Dalton McGuinty: I have never used a PIN or SMS.

Mr. Peter Tabuns: Okay. Did you keep your BlackBerry when you resigned as Premier and continued on as MPP?

Mr. Dalton McGuinty: I kept the technology, but then I got a new personal email account.

Mr. Peter Tabuns: Did you ever check your emails to see if you had communicated on the gas plant matter?

Mr. Dalton McGuinty: I check my emails every night.

Mr. Peter Tabuns: Have you ever done a search of your emails to see if you have material relevant to this committee?

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: I think at the end I will ask if you could produce that. In fact, why don't I ask now? Will you go through the emails—

Mr. Dalton McGuinty: Did you not, at the conclusion of your last meeting, seek all the records connected with DJPM?

Mr. Victor Fedeli: Yes, we did. Peter was away.

Mr. Peter Tabuns: I was not at that meeting.

Mr. Dalton McGuinty: Okay.

Mr. Peter Tabuns: Did you ever communicate with your staff in writing about the gas plants—non-electronic communication?

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: In testimony, you said, "My staff were fully expected to be both aware of the laws and ... following those laws." In your June 7 statement, you said that "inadequate training has made it" impossible "for staff ... to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept...."

Which is it: They were keeping the law, or they weren't exercising sound judgment?

Mr. Dalton McGuinty: They were both not aware of the law and, secondly, of course, untrained in its application and how it is that they should exercise their responsibilities. I'm not saying that's an excuse; I think it's a statement of fact. But here's what I'm saying, going forward: I'm saying that the Premier's staff today, your staffs, you yourselves, if you took a close look at the legislative framework, the 99 rules put forward by Mr. Morley, the standing directive issued by Cabinet Office saying that you shall delete all emails when somebody leaves, not to use any kind of discrimination in that regard—these rules are conflicting, they are messy, they are confusing. We need to find a way, and I'm asking

you to give this some consideration going forward—you need to find a way to ensure that staff and politicians understand the rules, because today they are, at best, murky.

Mr. Peter Tabuns: Well, I would say that, in fact, in our experience on this committee, the rules have been relatively straightforward. Your staff are supposed to retain substantive records. They are supposed to turn them over to the Archives of Ontario, and machines which have had their useful records taken off them can then be wiped clean. It's not that complex—

Mr. Dalton McGuinty: But here's the problem—

Mr. Peter Tabuns: —and in fact, your people weren't doing that. Either they were trained in the law or they were—

Mr. Dalton McGuinty: Here's the problem: At the end of the day, it's a matter of judgment. You may deem something to be a political record, and I'll say, "Well, actually, that's related to my constituency, so it's exempt." Or I might say, "Actually, that's political, so it's exempt." Or I might say, "No, actually, I think that falls into the transitory category, so it's exempt."

I know it's easy from on high, with the benefit of 20/20, to second-guess, but when you're on the ground making these decisions—I think we owe these people who are making these decisions—these are just ordinary staffers, in many cases—some clarity with respect to the rules. They don't have that benefit at this point in time.

Mr. Peter Tabuns: I would just say that they're not ordinary staffers. These were the chiefs of staff, senior people, not clerks. Frankly, Mr. Morley said he was well aware of the act. He retained a variety of records; unfortunately, not a single piece on the gas plants. To those of us who are looking at it from the outside, it looks extraordinarily selective. It looks like information has been covered up. Frankly, Mr. Wallace made it very clear as well: Your staff destroyed records and your ability to claim innocence. There is no documentation showing that you made a decision on the gas plants, other than for political reasons—simple as that.

Mr. Dalton McGuinty: Well, save and except for 130,000 have been produced so far for you to review.

Mr. Peter Tabuns: And, again, I've gone through those documents, and, surprisingly enough, there are a lot of drafts and a lot of duplicates.

The civil service seems to be able to keep all their records, but your staff—

Mr. Dalton McGuinty: The other thing—

Mr. Peter Tabuns: —seem to have been very diligent in making sure they were—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To Mr. Del Duca.

Mr. Steven Del Duca: Thanks very much, Mr. Chair. Thank you, Premier McGuinty, for being with us again here today.

Mr. Dalton McGuinty: Thank you for having me back.

Mr. Steven Del Duca: I know you referenced it in your opening and in several of your responses to questions from Mr. Tabuns, but I just want to go over this a little bit regarding former Premier's office records. I want to start by clearing up some, what I think are misconceptions about the documents and the records.

As you kind of alluded to, in response to an estimates committee request for records on the two gas plant relocations last year, 56,000 documents were turned over by the OPA and the Ministry of Energy. Since this particular committee began its hearings in March, the government has produced, as you've said repeatedly, over 130,000 documents, including almost 30,000 documents from the Premier's office. Furthermore, in April, 4,000 documents were released in response to an FOI request related to the Oakville and Mississauga gas plants. So these document disclosures include records from both current and former Premiers' offices. That includes thousands of pages of emails from your former staff and handwritten notes from two of your senior advisers on this file. We've also received communications and transition materials.

So my question is, would you be okay with addressing what I think are the false statements by the opposition, that they don't have records from your office? And, beyond that, what do you suspect is motivating this continued line of questioning from the opposition?

Mr. Dalton McGuinty: Well, I think that this is not a determined effort to pursue the truth. This committee is a partisan exercise, and I think we need to be honest about that. If you go to the Oxford dictionary and look up "partisan," it defines it as "prejudiced in favour of a particular cause."

This committee, dominated as it is by the opposition, is prejudiced in favour of the defeat of a government, and that colours everything that they do. That colours their characterization of witnesses. It colours their assessment of their integrity, their credibility, their truthfulness. It colours their assessment of the weight to be given to particular pieces of evidence.

Let me just give you a sense of what I'm talking about here. I mentioned this before. When it came to the production of documents, they say that there has been political intervention. The secretary of cabinet said that is not the case, and several senior bureaucrats have apologized for their missteps. When it comes to producing commercially sensitive documents—I here refer specifically to Minister Bentley's actions—the auditor, and every other witness who appeared before this committee, said that to release those documents would be foolish. They maintain this is part of a conspiracy. The whole notion of the language of "kept whole," which I think the NDP in particular have talked about—every witness who has had the opportunity to broach that, including TransCanada, said it was language that was put forward by TransCanada, and yet they refused to accept that.

What about the issue of code names? They absolutely insist there's something nefarious and untowards regarding the use of code names, like Project Vapour. The cab-

inet secretary himself said for his 31 years since he's been here, the code names have been commonplace.

These folks insist that there have been records stolen. The independent Information and Privacy Commissioner said she found no evidence of that whatsoever. But if you're looking through that partisan lens that colours everything you do, where your pursuit here is not the truth but rather the defeat of a government, then you see things in a different light, and you paint a certain narrative, and you're very reluctant to depart from that narrative.

I think we need to be honest about the exercise that is unfolding here before Ontarians. If you bear that in mind, what it helps you do is not lend unwarranted credibility and weight to the workings of this committee.

Mr. Steven Del Duca: Thank you. So another misconception that I'd like to address is that which surrounds our government's response to these issues. The opposition are spreading many mistruths, let's call them, that there has been some sort of staged cover-up—you mentioned this a second ago—when that's clearly not the case, as you've said. As I already outlined, and as you've outlined, hundreds of thousands of documents have been made public.

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As soon as she became Premier, Premier Wynne immediately called the House back and offered a select committee to investigate these matters. When the opposition rejected that, she expanded the scope of the justice committee to include a review of all matters pertaining to the relocations. To date, we've heard from roughly 40 witnesses. This is your second time here before the committee.

Given all of these steps that our government has taken, would you agree that our government is working hard to be open and transparent on this issue?

Mr. Dalton McGuinty: I'm not sure any government in the history of the province has ever done more to reach out across the aisle and extend the hand of co-operation and collegiality. And notwithstanding the refreshing approach brought by Premier Wynne and her government, I notice with some sadness that that government was unable to pass a single bill during her first session, apart from the budget. Not a single bill.

I have every expectation that this partisan exercise will continue until the next election. This is not about pursuing the truth; it's about defeating the government. We're not here today talking about our government's failure when it comes to millions of patients or millions of students or millions of workers, because there have been no big failures there. We did not do the right thing originally when it came to locating these gas plants, and I accept responsibility for that. But at some point in time, it is my sincere hope that the committee—especially driven as it is by the opposition—will produce substantive, positive, welcome recommendations relating to: How should we locate gas plants going forward? How should the bureaucracy deal with the production of documents when they receive requests? How should we ensure that

there are clear rules when it comes to the archives act? Because clearly, right now, neither the bureaucracy nor the political class understand its implications. Those are the kinds of things of a positive nature that this committee can actually do for us.

Mr. Steven Del Duca: Thank you for that. You know what? By way of comparison—because we've heard from a lot of people, including yourself here today, about the openness, the transparency and the considerable efforts that our government has taken with respect to trying to comply, and actually going above and beyond requests from this committee repeatedly. So just for a quick second, if we can put that in perspective, you were opposition leader here in this place from 1996 to 2003. Some might know I had the privilege of working here as a staffer during a couple of windows in that particular period. There was a lot of activity happening in the province of Ontario during that era.

There are three things that stand out in my mind from 1996 to 2003, three things that I know to this day people in my riding and in other parts of Ontario continue to talk about as occurrences that didn't reflect the very best of Ontario. In particular, in no particular order, I'm thinking of the sale of Highway 407, I'm thinking of what took place at Walkerton, and of what took place at Ipperwash. You were Leader of the Opposition. Your caucus and the staff working for you were working very hard, as I recall, trying to unearth what was really taking place on those three particular scandals. I'm just wondering if you can draw a comparison in terms of the efforts that have been made by our government to disclose information, to be open, to be transparent, and think back to documents, emails, correspondence, whatever it was, from that period when they were in power, on those three particular scandals, and draw a comparison and give us your perspective on that.

Mr. Dalton McGuinty: Well, first of all, let me say something which may not be readily aware, but I believe that our government—my government and now Premier Wynne's government—is producing more records than any government in the history of the province. We used to telephone each other and we did not record those telephone calls. There was no wiretapping of telephone calls. We would just pick up the phone and call each other. And now it's easier to take a telephone call, the spoken word, and turn it into the written word through an email. So for all the telephone calls we used to make, for which there is no record, there are now countless—thousands, hundreds of thousands, maybe even millions—of records that have been generated today that were not generated in the past. That's one reason why this committee has access to so many records.

Now, I combine that as well with an important character of western democracies. A lot of the deliberative aspects of decision-making—the conversations, the debates, the arguing, the toing and froing, the kicking around of ideas—that is verbal in nature, and it's very important that you be able to continue to do that.

I can't tell you the number of times, for example, that a member of the opposition would have approached me as Premier and said, "Can I speak to you in confidence about something? It's related to a substantive policy matter; can I speak to you in confidence about something?" I think we need to be able to retain the right to be able to speak to each other in confidence, whether that's in cabinet or whether that's with our constituents.

I recall a meeting with a constituent once who said, "I've got a real concern with one of your liquor licence inspectors. She's going to put me out of business. Can I speak to you in confidence?" I said, "Of course you can speak to me in confidence." There are appropriate times for us to be able to engage in the deliberative elements of our work in confidence. Ultimately, decisions have to be recorded, and they have been, and they will continue to be.

Mr. Steven Del Duca: Okay. I want to talk a little bit about staff training. I want to ask you about your June 7 statement in response to the Information and Privacy Commissioner's special report. You noted that in 2006, as you said, our government passed the Archives and Recordkeeping Act. You mentioned that, despite some efforts, the government did not devote adequate resources and attention to ensuring that all government staff in all ministries and in the Premier's office were fully informed of their responsibilities.

You go on to say that this inadequate training has made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated. The IPC confirmed, here before this committee this morning, that it's very clear that staff were, for the most part, not aware of their responsibilities.

In your letter, you urged the government to immediately devote all necessary resources to train all government staff regarding record management obligations. I'm wondering if you could expand a little bit on that. What information and resources do you think would help staff best understand their responsibilities around record retention?

Mr. Dalton McGuinty: Right. First of all, as I recall, the opposition voted against this particular piece of legislation; I think it's important to understand that as they climb onto their high horses. I think it's also important to understand that we failed, as a government—and I accept that—to put in place the necessary resources. We would have benefited from an intervention at a much earlier stage from the Information and Privacy Commissioner's office as to what it was that we needed to do to ensure that we had the necessary training programs in place.

Again, if you're partisan and you're looking at this exercise through a purely partisan lens, you think this is somehow specific to gas plants, the Minister of Energy and the Premier's office. This is government-wide. This affects all of the political class and affects all the

bureaucracy. We have all come up short when it comes to understanding what our responsibilities are under this new piece of legislation, so I'm glad that Premier Wynne is on top of this. I'm glad that she's making the necessary investments.

I think what we need to do, Steve, is, we need to find a way to create that cultural partnership that now exists between an MPP, their staff and the Integrity Commissioner's office and an MPP, their staff and the Information and Privacy Commissioner's office, so that there are regular visits; there's a sense that you can pick up the phone any time and ask for guidance with respect to "What can I delete? What can I not delete? What do I have to turn over to archives?"—those kinds of things.

Right now, that culture is just not there, and I think that's something that we need to reach for. Beyond the obvious training and clarity of rules, we need to establish a culture of co-operation and collegiality like the one that we have with the Integrity Commissioner's office.

Mr. Steven Del Duca: Thank you. Your statement that I alluded to a few minutes ago concludes by urging the government to draft clear guidelines describing in detail what kinds of records are deemed public and therefore must be preserved, and which are transitory records or personal, political and constituency records, and therefore need not be preserved. You go on to say that in the absence of such clarity—and you've referenced this a couple of times today—it will be very difficult for government staff to exercise sound judgment.

Through our work, the committee has been provided with and reviewed several different record retention schedules which outline several rules around and definitions of transitory records. What's clear is that not all records need to be kept, which the IPC herself confirmed.

The Common Records Series defines transitory records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

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When secretary of cabinet Wallace was here, this committee asked about his personal experience with transitory records, and he told us, "From the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant."

Based on your experience in government, does that seem to be an accurate characterization of transitory records?

Mr. Dalton McGuinty: I like the cabinet secretary's understanding of this particular language. What I can say is that I have had the benefit from time to time to stand over my appointments secretary, for example, and to look at the emails coming in on a daily basis is staggering, to

say nothing of the chit-chat and minor engagements that take place between staff because of the facility with which we communicate with each other now through email.

There are two points I want to make here. Overwhelmingly, the stuff that is being passed back and forth on email is either transitory or personal. In my case, it was largely political. The other point I want to make is that there is still a lot of important government business that is taking place verbally, as part of a long oral tradition, where we deliberate matters in confidence. That is so important that we retain that.

I know the Information and Privacy Commissioner has said that we need to put in place a new legislative duty requiring that we record certain kinds of deliberations or actions prior to final decisions. I think that would be a big mistake, and you should know that Information and Privacy Commissioners have been asking for this in Canada for some 20 years now, at the federal level and at the provincial level. The reason that the federal Conservative government rejected that advice—by the way, when a private member's bill to that effect was introduced—was because there was a reasonable understanding of how important it is that politicians and their staffs and their constituents and stakeholders from time to time have an opportunity to speak to each other and to deliberate in confidence.

Mr. Steven Del Duca: I want to take up that last point because I think it is very important that we try to clarify these particular points. There is, as I think you would know, a wide misconception and I think a deliberate attempt on the part of the opposition to confuse people with respect to this notion that every single piece of paper, every electronic record, every whatever it is needs to be kept or retained. If that was the case, I imagine that government would grind to a halt.

So let me ask you: What was the intent of the 2006 record-keeping legislation? Because it seems to me that it provides best practices for what is and what isn't reasonable in terms of record retention.

Mr. Dalton McGuinty: It was an effort, modest as it was, to introduce some rules regarding what it is should be kept for posterity. Where we failed, where we came up short, is elaborating those rules in a way that makes them very clear and straightforward. That doesn't mean, by the way, that the way you make something straightforward is you take something that's open to judgment and then write a 30-page treatise to guide individual judgment-making on that particular area. That's not going to be helpful.

We had the right idea in terms of putting forward this legislation. It was in keeping with so many pieces of legislation and initiatives that we had pursued as a government to introduce more transparency and accountability. But now we need some clarity with respect to those rules, and we need to ensure that we don't throw a spoke into the wheels of the foundation for a successful democracy when we prohibit politicians and staffs and constituents and stakeholders from having confidential delibera-

tions leading up to final decisions. Of course, I agree that those final decisions must be the subject of record.

Mr. Steven Del Duca: Thanks very much. I'll stop there, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. To Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. Mr. McGuinty, if there is so much openness and transparency, why is it that we still don't know how much the gas plant cancellation cost?

Mr. Dalton McGuinty: Well, it has been proven to be a very complicated exercise. I think you will recognize that.

Mr. Victor Fedeli: Really? That's it?

Mr. Dalton McGuinty: I think you'll recognize that. And I think it's worth listening to what the auditor had to say about this, because the opposition has insisted that there has been fiddling with the numbers, shall I say, and at one point in time, after a big discussion related to the numbers and who was coming up with what numbers, Mr. Bob Delaney asked the following question: "In reading the report"—that's the auditor's report—"there's nothing in there that indicates any evidence of wrongdoing. Did you find any evidence of wrongdoing on the part of the OPA, the ministry or anybody else" with respect to these numbers—

Mr. Victor Fedeli: Let me ask again. It's a simple question.

Mr. Dalton McGuinty: But I think it's important that we hear the answer, because Mr. Jim McCarter—

Mr. Victor Fedeli: Why do we not know what the total is?

Mr. Dalton McGuinty: —answered, "No, I don't think there was any evidence of what I would call wrongdoing. No."

Mr. Victor Fedeli: So why don't we know how much both cancellations are, with all this alleged openness?

Mr. Dalton McGuinty: Well, I think you've had four numbers from the OPA now.

Mr. Victor Fedeli: What number do you go with today?

Mr. Dalton McGuinty: Well, I think it points to a shortcoming over at the OPA.

Mr. Victor Fedeli: Oh, I see. The last time you appeared before this committee, I asked you almost 20 times when you learned that the costs of the cancellation would consist of more than sunk costs. I'll ask you again today for the first time: When did you know there were more than just sunk costs in the cancellation of both Mississauga and Oakville?

Mr. Dalton McGuinty: Whenever the Ministry of Energy made that public, at the same time that you learned of that.

Mr. Victor Fedeli: Oh, I don't think so. I think there are documents here. Why don't we start with Liberal gas plant scandal document number 5? Clerk, are the documents distributed?

The Clerk of the Committee (Ms. Tamara Pomanski): Yes, they're distributed.

Mr. Victor Fedeli: So the last document there, and this is a 2011 document: "Settlement for cancellation of Oakville and Mississauga gas plants: \$900 million." There's a note on this one, number 6: "Government is currently in negotiations to settle the cancellation of these plants with the developers with an exposure identified up to \$900 million depending on the outcome and mechanism ... (may be electricity sector exposure if delivered through)" the electricity vendor.

This is your finance and treasury people. They are very clearly—

Mr. Dalton McGuinty: Sorry? Which document again?

Mr. Victor Fedeli: The last one.

Mr. Dalton McGuinty: The last page?

Mr. Victor Fedeli: The last page, document number 5.

Mr. Dalton McGuinty: Partisan exercise document number 5? I'm there. I'm with you.

Mr. Victor Fedeli: Liberal gas plant scandal document number 5: \$900 million. You can joke all you want about it, but I'll tell you, the people who are paying their hydro bills, doubled under your government, aren't laughing today. They are not laughing today, Mr. McGuinty. They are looking at this \$900 million that your own people estimated long before your minister said, "You're going to hear many numbers. All you need to remember is \$40 million." That was a condescending sentence, Mr. McGuinty: \$40 million, which now is going to be turning out to be hundreds upon hundreds of millions.

I'll ask you again: When did you know that it was more than sunk costs?

Mr. Dalton McGuinty: My answer remains the same.

Mr. Victor Fedeli: Well, you haven't answered it.

Mr. Dalton McGuinty: And I've said this before. By the way, on a day like today, where it is so warm and there's so little air movement, I can tell you that I'm reminded of all the people who have approached me and said, "Thank you for moving so quickly"—

Mr. Victor Fedeli: Well, let me tell you what my cab driver told me this morning in the rain. He said, "I think Mr. McGuinty should go to jail." That's what I heard from my cab driver this morning, if you really want to talk about the weather.

Mr. Dalton McGuinty: —"for shutting down coal-fired generation in the province of Ontario."

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I think that's beyond—

Mr. Victor Fedeli: Well, it's the truth. This is what the cab driver said.

I'll ask you again. Let me reword it in a different way. When did you become aware of additional costs? I'll give you a chance to answer this one, then. These are additional costs now. This is not the \$40 million sunk costs or the \$190 million that was announced—

Mr. Dalton McGuinty: When everybody else—

Mr. Victor Fedeli: —the \$275 million.

Mr. Dalton McGuinty: When everybody else was made aware. I rely—

Mr. Victor Fedeli: So what you're saying is, everybody else was made aware back in 2011. This is what you've just said to us.

Mr. Dalton McGuinty: In my office, of course, our connection with the negotiations which led to the ultimate resolution of these matters and particular costs—

Mr. Victor Fedeli: So what you've just said is—

Mr. Dalton McGuinty: Hang on a second, now—so I relied on—we didn't make those calculations inside the Premier's office. I think you can appreciate that.

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Mr. Victor Fedeli: You've answered the question. For the first time, I'll give that to you. You said, when everybody else was aware.

Mr. Dalton McGuinty: We also relied, to a limited extent, on the Ministry of Energy, and they relied, in turn, on the numbers and the calculations prepared by the Ontario Power Authority.

Mr. Victor Fedeli: No, no. This is very good. So let's go to doc 4 for a moment here—the Liberal gas plant scandal document 4, the second-last document.

You've just told us you became aware that there were more than just sunk costs the same time everybody else was. David Lindsay, the deputy minister, received a letter from Brad Duguid, who was your minister at the time. In the last paragraph, he says, "The execution of the arbitration agreement ... regarding the determination of liability as between the crown in right of Ontario"—that's going to be the taxpayer dollars—"and the Ontario Power Authority"—that's going to be ratepayer dollars. So you're now telling us that back in August 2011, you knew there would be two sets of costs. Is that what I'm hearing?

Mr. Dalton McGuinty: Well, I think I see a letter here from the deputy—

Mr. Victor Fedeli: From your minister to your deputy—

Mr. Dalton McGuinty: From the minister to the deputy.

Mr. Victor Fedeli: —telling him there are two sets of costs: one for the taxpayer, and one for the ratepayer. First time—

Mr. Dalton McGuinty: It's a letter to the deputy.

Mr. Victor Fedeli: But it's from your minister. So your minister knew that there were two sets of costs back in 2011, and you said you learned of it when everybody else did. This is your minister.

Mr. Dalton McGuinty: Yes, okay. Well, you'll have to ask him about his understanding of this information.

Mr. Victor Fedeli: But I'm asking you, and you've already answered. You learned it at the same time—

Mr. Dalton McGuinty: No, this is the first time I've seen this letter.

Mr. Victor Fedeli: But is it the first time you've learned that there are two sets of costs?

Mr. Dalton McGuinty: I don't normally see letters issued by ministers to their deputies. There are many ministries—

Mr. Victor Fedeli: First you blame it on the OPA, and now you're throwing Brad Duguid under the bus. Is

there anybody else? We're going to need a bigger bus here today.

Let's go back to doc 5, then—the \$900 million. Are you telling me you never looked at this treasury document?

Mr. Dalton McGuinty: I'm assuming that you're in training for a stand-up comic routine somewhere, Mr. Fedeli—

Mr. Victor Fedeli: There's nothing funny about \$900 million here for the taxpayer and, as we've learned, for the ratepayer.

Mr. Dalton McGuinty: Then you should tell your cheering section to stop laughing.

Mr. Victor Fedeli: The settlement for cancellation of Oakville and Mississauga gas plants is \$900 million. This is something that is a 2011 document. You've now said, under oath, that you learned about it when everybody else did, and we learned that others learned about it in 2011. So let me ask you: Why would your caucus have stood up in the Legislature and told us, time after time, person after person, the total—total—cost is \$40 million for Oakville or \$190 million for Mississauga when those are just the sunk costs, not the hundreds of millions that were going to be siphoned off and paid through the OPA to the ratepayer, to add it to global adjustment, which has helped double your hydro bills under your administration? Why would your people have stood up and said that, one after another, if they knew back in 2011?

Mr. Dalton McGuinty: Because it was our honest belief.

Mr. Victor Fedeli: I've got a letter here that says there are two costs back in 2011. Why wouldn't have the energy minister, or ministry, have stood up—

Mr. Dalton McGuinty: I don't see—

Mr. Victor Fedeli: We've provided document after document after document—

Mr. Dalton McGuinty: Premier Wynne has spoken to this, and, I thought, very, very clearly—

Mr. Victor Fedeli: No, I asked her 32 times when she knew, and we haven't got a good answer from her—

Mr. Dalton McGuinty: —and very—

The Chair (Mr. Shafiq Qaadri): Gentlemen. Gentlemen.

Mr. Victor Fedeli: We'll get to her another day.

Mr. Steven Del Duca: Mr. Chair, I have a point of order.

The Chair (Mr. Shafiq Qaadri): Point of order: Mr. Del Duca.

Mr. Steven Del Duca: It would be, I think, helpful for everyone who's trying to get some sort of clarity here that the members asking questions would give witnesses the opportunity to answer.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. It's not a point of order, but I would support that.

Mr. Fedeli, continue.

Mr. Victor Fedeli: Thank you, Chair.

Minister Chiarelli calls them "other calculations." This is his word for additional costs—costs other than sunk

costs. When did you first become aware that there would be other calculations? I'll use his own wording.

Mr. Dalton McGuinty: Okay, and I'll gave you the same answer that I gave the last time I appeared before this committee: I became aware of any additional costs at the same time that you did—

Mr. Victor Fedeli: Well, not—

Mr. Dalton McGuinty: When I had the opportunity to speak to the media about costs, I relied on my staff, who, in turn, relied on the Ministry of Energy, who, in turn, relied on the OPA. We've learned, of late, that the OPA, I think when it came to the case of—I forget whether it was Oakville or Mississauga, had put out some four different numbers. So perhaps it's not surprising lately that it's important that the Premier call in the auditor, have the auditor take a look at these costs and provide us with information we can all rely on.

Mr. Victor Fedeli: But, Mr. McGuinty, you're talking about the specific number. I just asked you: When did you learn that there were going to be two numbers, not what the number was. The number is still in dispute. That's why we have the Auditor General coming with her report at the end of the summer or at the beginning of the fall.

I'm asking you: When did you learn that there were going to be two sets of numbers, one charged to the taxpayer and one charged to the ratepayer?

Mr. Dalton McGuinty: I did not know how the ultimate number was going to be apportioned—

Mr. Victor Fedeli: But you did know that there was going to be an apportionment?

Mr. Dalton McGuinty: It was not out of the realm of the possible in an energy matter. We had dealt with these kinds of things before in cabinet, for there to be an apportionment of costs. I didn't know specifically at the time, as I recall, how much of the \$40 million would be assigned to taxpayers and how much of the \$40 million would be assigned to ratepayers—and when it came to the \$190 million, where the division there would lie—so you're seeing it in a different way from me. I'm talking about the apportionment of costs—

Mr. Victor Fedeli: Well, the Auditor General saw Mississauga in a different way too. He told us that your government knew, as early as July the year before, when, at that time, the \$275 million had already been paid through the OPA, that you were sticking with the \$190-million number for Mississauga. How can that be if the amount, months and months and months earlier, had already been paid? How can that be, that you stuck with the \$190 million? You certainly didn't correct your ministers when they stood and said that to us. How can that be?

Mr. Dalton McGuinty: Your question presumes that I somehow was in close contact with the OPA—with their accountants—that we sat down from time to time, we reviewed these numbers, these calculations—

Mr. Victor Fedeli: So they did this on their own? They decided—

Mr. Dalton McGuinty: —that we reviewed these numbers and their calculations, and that they had a direct line to me and they'd phone me at home at night and say, "Here are the latest calculations for you."

Mr. Victor Fedeli: Well, they had some instructions from you, because it certainly wasn't incumbent on the OPA just to cancel a gas plant one day.

Mr. Dalton McGuinty: They didn't do that. They would communicate through the head of the OPA and the deputy minister, and then the minister. That's how the numbers were—

Mr. Victor Fedeli: So when did the information on the two sets of costs go to cabinet, then? Let's look at it that way.

Mr. Dalton McGuinty: I don't recall.

Mr. Victor Fedeli: Liberal gas plant scandal doc 1, from Chris Morley: He says, "I've now spoken with 4 who have been briefed and are willing to sign necessary docs on Vapour."

Mr. Dalton McGuinty: Just so I'm clear, is this an email?

Mr. Victor Fedeli: Yes, and I'll tell you a little later how we got our hands on that email.

Mr. Dalton McGuinty: So it was produced by this process?

Mr. Victor Fedeli: I'm going to tell you a little later how we got that email.

Mr. Dalton McGuinty: So this is one of the emails that you didn't get that you do have?

Mr. Victor Fedeli: I'm going to tell you a little bit later how we accessed that.

Mr. Dalton McGuinty: I just wanted to make sure of that.

Mr. Victor Fedeli: You won't be so cocky later.

Bentley, Duncan, Duguid and Wynne all have been spoken to by Chris Morley and are signing the necessary documents on Vapour. The documents on Vapour are very clear that they define that there are going to be two sets of costs. Do you think this, back on July 29, 2011, was when you and your cabinet ministers—including Kathleen Wynne, who chaired the cabinet meeting and signed that document—do you think July 29, then, would have been the first date that Kathleen Wynne and the cabinet knew that there were two sets of costs?

Mr. Dalton McGuinty: I think you've had the benefit of hearing from Premier Wynne on this and you've had the benefit of hearing from Mr. Morley on this—

Mr. Victor Fedeli: I've asked Premier Wynne 32 times, and she won't answer that question, because, of course, it will prove that your cabinet members misled the Legislature.

Mr. Dalton McGuinty: —and you will know that there was a high-level briefing given to the ministers in connection with what is known commonly as a walk-around to seek approval for a particular decision. You will know that no treatment was given to costs during the course of that discussion. You've heard that both from Premier Wynne and from Mr. Morley.

Mr. Victor Fedeli: Well, we didn't hear it from Premier Wynne. She won't answer the question, the same way as you.

Let's jump to those emails, because you wanted to talk about why we received an email from Chris Morley when we said we didn't. Well, let me tell you exactly why, Mr. McGuinty: When a freedom-of-information request was submitted, the answer came back that there are no emails in existence from Chris Morley, from Sean Mullin, from Jamison Steeve. That is now hopefully going to be the subject of the privacy commissioner's next investigation. I'm praying that that will happen. So how did we get this email?

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Mr. Dalton McGuinty: With no particular outcome in mind, of course.

Mr. Victor Fedeli: How did we get this email? We got this email because other people did not destroy their email like Chris Morley, Jamison Steeve and the others did. This came from other people who kept their email from Chris Morley. We also had email from the Ministry of Finance, where we're now for the first time seeing these types of email. That's what got us wondering, why are we seeing these for the first time? When they were asked directly for their email, they didn't provide them. This had to come from other sources, so that's how we were able to—I know you talk about the 130,000 documents that we do have, but I think it's more important to talk about those documents that we don't have. Here we sit today—still don't know how much the gas plant cancellations were and who ordered the cover-up.

You talked about those code names. Back when the 36,000 documents were released on September 24, all five of us on this side looked at them and queried, why is there nothing here from the Premier's office? Why is there nothing here from the Minister of Energy? Nine months it took. About two weeks later, we did get another tranche of 20,000. That's where the code names were. It took somebody at the OPA, the ones who you like to throw under the bus—it took somebody from the OPA who had a change of heart, even though they were ordered—we've had two witnesses swear under oath that they were ordered to remove those documents. We did have them have a change of heart.

So I find it disingenuous for you to talk to us about these 130,000 emails when, only after we pushed and pushed hard, did we ever get the next tranche and the next tranche. The fact that we're still getting email is pretty indicative.

Mr. Dalton McGuinty: I think it's important—

Mr. Victor Fedeli: I would ask you, why hadn't the committee received—

Mr. Dalton McGuinty: That's a lengthy statement from you. I appreciate the statement.

Mr. Victor Fedeli: But why hadn't the committee ever received a single email from you concerning the gas plants?

Mr. Dalton McGuinty: Let me speak to the lengthy preamble. I think it's important to recognize that on

several occasions senior civil servants—I think it was the deputy minister for the Ministry of Energy, it was the head of the Ontario Power Authority, the cabinet secretary himself—who, when speaking to the issue of the production of documents in various tranches, talk about how there was no political intervention of any kind in that exercise and to say otherwise is inaccurate. They offered their apologies for their shortcomings when it came to producing these kinds of documents—

Mr. Victor Fedeli: We heard that from you earlier, Premier. I appreciate that.

Mr. Dalton McGuinty: And it would be helpful if this committee, for example, could provide advice ultimately regarding the request and production of documents from the civil service.

Mr. Victor Fedeli: The first thing is the bill that you put in place—maybe you could have actually followed those particular rules. It's not the 130,000 documents, Mr. McGuinty, that we do have, that took months and months, almost a year, to actually get our hands finally on some of them; it's the documents we still don't have, I think, that are of more concern to this committee.

What are you and the Liberal staffers hiding that caused you and your staff to delete email, destroy email and remove any trace of them?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: What is so critical in there that this concerted effort was put in place to do that?

Mr. Dalton McGuinty: Again, I really think it is important to look at the facts; they are not entirely unimportant. There is a standing directive from the Cabinet Office. It is a protocol; there are no ifs, ands or buts about it, and the staff comply with that. To the best of my knowledge—

Mr. Victor Fedeli: Nine months later?

Mr. Dalton McGuinty: To the best of my knowledge, that protocol was around during the previous government and the one prior to that. And it says, since the advent of email, when staff retire, their emails must be purged.

Mr. Victor Fedeli: So you do know the protocol after all? You really do know it.

Mr. Dalton McGuinty: I learned about that protocol the same time when you learned about that protocol.

Mr. Victor Fedeli: Do you condone the deletion and destruction of the copies, or do you believe that backups were made?

Mr. Dalton McGuinty: We need clarity.

Mr. Victor Fedeli: No, no, I'm asking you a question. Do you believe there are backups?

Mr. Dalton McGuinty: We need clarity.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. McGuinty, last Tuesday Chris Morley was in this committee. He was asked about the withholding of documents and the debates that were going on in the Legislature about it. He said, "It would have been entirely

appropriate for them"—the Premier's office—"to be aware of any issue before the Legislature." Is this true?

Mr. Dalton McGuinty: As a general rule, yes. If there's something happening in the House, that's something we should know about.

Mr. Peter Tabuns: Thank you. When you testified before the committee last time, you said you hadn't briefed Premier Wynne about the gas plants issue. My colleague Taras Natyshak asked, "Did you, as an individual, not sit down with Premier-elect Wynne?" And you said, "No, I did not." I think people find that hard to believe. I do, personally, find it hard to believe.

Has she asked you? Has Premier Wynne asked you at any point about these missing emails and missing documents?

Mr. Dalton McGuinty: No. Just so we're clear about how I received Premier Wynne, not unlike the courtesy extended to me by the previous Premier—I welcomed her into my office. This had been preceded by a lot of work between our two staffs, going over protocols and issues and concerns and those kinds of things. So I didn't consider it my place, when I was receiving Premier-elect Wynne for the very first time, to launch into a discussion of substantive issues, but rather to say, "Welcome. If I can ever be of any assistance, please let me know."

Then I offered her a little bit of advice that would be specific to Premiers: Protecting your personal time, for example; making sure that you're not getting too tired, for example. Those kinds of more personal things.

Mr. Peter Tabuns: So she did not ask you about the gas plant issue—

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: —any briefing, and you didn't volunteer one.

Mr. Dalton McGuinty: That is correct.

Mr. Peter Tabuns: Did she, at any point, either—

Mr. Dalton McGuinty: But I'd be surprised if our staffs did not talk about those kinds of things.

Mr. Peter Tabuns: Fair enough, and I think we may have an opportunity to question them on that.

Did Kathleen, as Premier or as cabinet minister, ever ask you about whether your office was destroying emails or shredding important documents?

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: In the time between when Kathleen Wynne was sworn in as Premier and when you resigned your post as MPP, did Kathleen Wynne ever ask you why documents were missing? Did she ask you to account?

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: Last time you were here you said Kathleen Wynne didn't ask about the cost of cancelling the gas plants when she was a cabinet minister. She didn't ask when she was a campaign co-chair, when the Mississauga decision was made. Did Kathleen Wynne simply rubber-stamp whatever was brought to her on this matter?

Mr. Dalton McGuinty: I was not privy to the discussion with Kathleen Wynne then, before she was

Premier, during the campaign, so I can't speak with certainty about whether or not there was a discussion of costs at that particular point in time. I don't recall her raising cost issues in cabinet, connected with this. And of course, I wasn't privy to the discussion that they had when she was asked to sign a walk-around, although Mr. Morley and Premier Wynne herself said that there was no talk of cost. It was all very high-level at that point in time.

I think it's important to keep in mind as you try to—

Mr. Peter Tabuns: That's okay. Why don't I just go on to my next question, because I know time is short and you'll want to make full use of the time, as I will.

Kathleen Wynne has said that "there were decisions that were made about the process, around documents, that I think shouldn't have been made." She didn't call these sins of omission or inadvertent errors, but active decisions.

What do you think about Kathleen Wynne saying that you made the wrong decisions?

Mr. Dalton McGuinty: I'm assuming we're talking here about—

Mr. Peter Tabuns: The gas plants; the cancellations.

Mr. Dalton McGuinty: —the archives.

Mr. Peter Tabuns: No, I'm actually talking to you about the decisions to site these plants and the way you dealt with them when you found you had a big political problem.

Mr. Dalton McGuinty: I accept that. We didn't get it right in the first place. And I'm hoping that there'll be some advice forthcoming from this committee that helps us better site these plants in the future, including—and I think you, Mr. Tabuns—I forget how you put it but I thought you put it very eloquently, something to the effect of "We've been outsourcing the location of these plants to the private sector." And then we take it on the chin in government when somebody out there decides where they're going to put the plant, and it becomes clearly unacceptable to a community. So I think that would be very helpful, to get that kind of advice from this committee.

Mr. Peter Tabuns: When Premier Wynne was asked about who was responsible for the deletion of emails—I'm back to emails—she said, "I think that people were acting in ways that they had been told to act." But in your June 7 statement, you said it was the staff; it was all their decision. Who was telling people to act? Who was telling people to delete their records?

1410

Mr. Dalton McGuinty: I think there was a practice in place that had been extant since the advent of emails here at Queen's Park. When we transitioned from telephone calls to emails, we then put in place an archives act, and we did not take the necessary steps beyond that to ensure that staff understood, just as clearly as they understood about keeping their member out of harm's way when it comes to conflicts, so they understand what they can receive by way of gifts and what they must turn back, just as they are so well-versed in that area of law, we

need to do a better job of making sure they understand what their responsibilities are—what our responsibilities are—when it comes to dealing with materials that ought to be preserved.

Mr. Peter Tabuns: Kathleen Wynne called the mistakes on the gas plants unacceptable. If the decisions were unacceptable, why did you accept them?

Mr. Dalton McGuinty: From time to time, you get things wrong.

Mr. Peter Tabuns: That's it?

Mr. Dalton McGuinty: It's not the first thing that a government has gotten wrong. It won't be the last thing that a government gets wrong. But I think when you do get things wrong, and inevitably all governments do, what really counts is that you own up to that and that you find ways to redress that wrong. It was wrong for us to site those plants in those particular locations. It's right for us to relocate those. I think we can draw a lot from that.

Mr. Peter Tabuns: Just with reference to your earlier comments on the deletion of emails and the training or not of your staff and their use of common sense or not. Is ignorance of the law a defence?

Mr. Dalton McGuinty: I think we both know the answer to that one. I accept responsibility for not recognizing that subsequent to the passage of that law we didn't put in place the necessary programs and training. I say again, and it's in fairness to myself, if we could have the same culture in government related to the preservation of records that we have with respect to understanding our rights and responsibilities when it comes to the Integrity Commissioner's legislation, we will have done what we need to do. But to this point in time, as I said, in nine and a half years as Premier, I never once heard from either of the cabinet secretaries about these kinds of issues—or the Information and Privacy Commissioner either. It's been something that's been off to the side—

Mr. Peter Tabuns: Mr. McGuinty, I appreciate that—

Mr. Dalton McGuinty: It has fallen off the agenda, and that's unfortunate.

Mr. Peter Tabuns: No, I don't think it fell off the agenda. We've had people sit in that chair and say that they knew what the record-keeping laws were. A woman who worked in your issues analysis unit knew the rules. She followed them. We've seen civil servants produce large numbers of documents on request. Clearly, there are a lot of people who understood what the records requirements were and followed them, except for a small, critical group who seem to be very energetic and thorough at destroying their records so that they wouldn't be available for this committee.

Morley's actions: Mr. Morley knew he had to keep some records. He just made sure he wasn't keeping anything on the gas plants. He kept records, destroyed all the transitory ones, kept what he felt were the critical ones on a variety of issues that I related to you earlier. Your people knew what they were doing and you know that they know.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Dalton McGuinty: I want to bring your attention again to what I think is a very important statement made by the secretary of cabinet. He said, "I don't know if political staff, or indeed many public service staff, understand the parameters and details associated with the archives act.... That is a little bit arcane."

Mr. Peter Tabuns: He also said that they would know what they had to save. He knew that it was a matter of common sense, and he made that point not just to us in this committee but he made that point with the Information and Privacy Commissioner. They acted with knowledge about what was to be saved, and they wiped out their records.

Mr. Dalton McGuinty: The other point that bears repetition is the fact that this is not specific to gas plants. It is not specific to the Ministry of Energy. It is not specific to my office. This is an issue, government-wide, and because of the lens you are wearing, as you look at this work, you fail to understand that this is an important issue for everybody in the government, both the political class and the bureaucracy.

Mr. Peter Tabuns: Well, most of the civil servants seem to keep their records. Your key political—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Mr. Del Duca.

Mr. Steven Del Duca: Thank you very much, Mr. Chair.

There are a couple of things I want to go through in my final 10 minutes of questions here. I'm not sure if you had a chance to review some of the testimony that was before the committee earlier today—

Mr. Dalton McGuinty: No.

Mr. Steven Del Duca: —from the IPC, from Dr. Cavoukian, or even from a few days ago, when Emily Marangoni was here before the committee.

Mr. Dalton McGuinty: Yes, that I looked at.

Mr. Steven Del Duca: There was a series of very unfortunate questions levelled at Ms. Marangoni which were somewhat followed up on today when the Information and Privacy Commissioner was here regarding the way that the server system works here at Queen's Park. I'm not technologically the most savvy person who is here so I don't understand all the intricacies of it, but the opposition, both in their questioning of Ms. Marangoni and stuff that they said to the media and elsewhere throughout this process and stuff that they said in their questions of Dr. Cavoukian today—a lot of conversation took place around something called the RAID system—RAID, I understand, is the acronym—with respect to the servers. I'm not sure if you've had a chance to review any of that testimony whatsoever but I just wanted to point out—it's not even really a question; it's more of a statement. I just wanted to point out that that is a server system or a computer system that first arrived here in the government of Ontario at Queen's Park in the mid-1990s. I wasn't sure if you had a chance to review any of that testimony? Are you aware of that—

Mr. Dalton McGuinty: I saw the testimony. I'm not familiar with the technology. I was not aware that there

was any kind of a backup system. I think Mr. Fedeli or somebody over here asked me about a backup system. I was not aware of that. Frankly, I think my responsibility was to keep my eye on the big picture and to hope that the technological resources were in place and that the rules were in place so that we all understood when you could delete something and when you could not delete something. I know that Mr. Fedeli made reference to an email here from Mr. Morley. I gather he would, in his judgment, categorize this as a public record that must be preserved. I think that's debatable and I think there are a lot of people who would argue that it may be more transitory in nature and therefore could be the subject of deletion.

The point I'm making is, he could be right and I could be right. It's a matter, at the end of the day, of personal judgment, and that's where the shortcoming is to be found. That's why I'm saying we need more clarity, and clarity doesn't go by taking us from 99 rules to 499 rules. That's not where we're going to find clarity.

Mr. Steven Del Duca: I think your characterization in your earlier testimony today about how this has become fairly clear that this is a partisan attack and that's the lens that the opposition is bringing to what should be, I think, a constructive process and discussion around how we site energy infrastructure in the future and now, with respect to what we're talking about at this particular moment, how we might flesh out some clarity around record-keeping—but along the lines of this notion that this is driven largely by their partisanship, I'm just wondering: Are you aware of the fact that the PC candidates in the Mississauga and Oakville ridings have been repeatedly requested to appear before committee and they've refused to do so?

Mr. Dalton McGuinty: I was unaware of that, and I'm disappointed to learn that because we hear from the opposition members on the committee that they are determined to bring forward any and all information that would have a bearing on this. They've never been reluctant to reach far and wide in terms of asking for different kinds of information, including my political email account. I would expect that Mr. Hudak would want to weigh in on this and encourage those individuals to make an appearance here.

Mr. Steven Del Duca: Would it surprise you to know that when Mr. Hudak was here at committee and there were discussions coming up around all of these topics, he didn't seem particularly interested in trying to make that kind of intervention?

Mr. Dalton McGuinty: I'm disappointed. I think that ultimately we look to our leaders to help us rise above partisanship and make a genuine effort to pursue the truth. If these gentlemen here can't look to their leaders for that kind of guidance, then that's a disappointment.

Mr. Steven Del Duca: I know, in the first round of questioning here today, I did reference three things that occurred back when you were opposition leader, and I want to go back to them just for a quick second. There might be more that you want to elaborate on this; if not,

that's fine too. But I referenced earlier the sale of Highway 407, what took place at Ipperwash and what took place at Walkerton.

1420

Those were three very, very significant, scarring occurrences that took place in the province of Ontario: a highway sold off for billions of dollars less than what it was really valued at prior to the 1999 campaign, to balance the books; individuals dying in Ontario because of water at Walkerton; and, of course, what took place with Mr. George at Ipperwash.

When you think back on your time as opposition leader during that era and you consider how difficult it was for you as opposition leader, and members of your caucus and your staff, to access relevant information that the people of Ontario had a right to know with respect to those three kinds of—well, frankly, “scandals” is the only word that I can think of to use—and you compare that to how open and transparent, and in many cases voluntarily so, Premier Wynne and our government have been, can you provide us with a little bit of an elaboration or some more historical perspective comparing how we have responded to what's taken place around these two gas plants and what took place around the sale of the 407, Walkerton and Ipperwash when the members opposite and their colleagues were in power?

Mr. Dalton McGuinty: Well, if you take a look at those three particular issues and contrast with the one that brings us here today, they are a striking study in contrasts and how difficult it was for us in opposition to obtain information from the government, notwithstanding the various requests that we made and the forms that those requests took. The government dug in, moved into a kind of bunker mentality, refused to acknowledge that there were real challenges, and refused to provide information.

Compare that with what is happening here today. This is the second time that I myself have appeared here. Premier Wynne has been here. I understand that they may be interested in inviting her or others back, and I am convinced that those who are invited from our side will attend, because we want to do as much as we can to lend insight into what happened here and, in particular, our motivation.

I know much has been made of this, and I don't want to diminish its importance, but what we're talking about here is the relocation of two gas plants, the original siting for which we got wrong. I've been criticized many times over for failing to live up to a promise, but this is the first time that I've been criticized for honouring a commitment. I thought we were all together on this originally; certainly, people living in those communities had every impression that we were united as political parties in terms of the position that we were taking on these gas plants. But, as I say, I guess that was then.

We find ourselves in this position today—not an easy one, but it's still the right place for us to be. By that I mean that we honoured a commitment, and if I think about a day like today, with the potential for smog and for the absence of any real air circulation in the environ-

ment, I am pleased that we're not building gas plants in those communities. I'm pleased that that's part of a broad energy plan devoted to ensuring that we clean up our act, that we shut down coal and that we do more to harness the power of renewable energy.

I think that when we put that in context, it's important for us to understand what we're talking about here.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Steven Del Duca: Terrific. Well, with the final minute, if there's anything else you'd like to add to your testimony today, Mr. McGuinty, feel free.

Mr. Dalton McGuinty: Well, I want to ask committee members yet again to do something of real value for the people of Ontario. Tell us specifically: What should we do in the future when it comes to locating gas plants? What rules should govern the production of documents? If you have an opinion with respect to how long anybody should hang on to an email, you need to put that on the record. You need to tell us specifically. I don't know what the rules are governing your staffs; I don't know, if I move from one office to another, whether they have different rules. I think it's time for us to inject some real clarity into those kinds of issues.

Mr. Steven Del Duca: Thanks very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca.

To Mr. Fedeli, a final 10 minutes.

Mr. Victor Fedeli: Thank you. I'm going to Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair. Okay, you want me to use which one? Do I get stereo mikes?

Thank you very much, former Premier McGuinty, for joining us today. I'm going to touch on a couple of things that actually you opened the door on with Mr. Del Duca. You talked about access to information and a search to get to the bottom of things. I will point out to you that it was the former government that established the judicial inquiry to look into Walkerton, and then-Premier Mike Harris was the first Premier in over 50 years to actually testify before a judicial inquiry.

Our party has been calling for a judicial inquiry on this gas plant scandal. Would you support a judicial inquiry, or would you encourage the Premier of the day, today, Kathleen Wynne, to establish a judicial inquiry to look into this?

Mr. Dalton McGuinty: I'm here today.

Mr. John Yakabuski: No. I'm asking you: Would you support us? I believe you thought the judicial inquiry was a great thing in Walkerton.

Mr. Dalton McGuinty: I was here before; I'm here again today. I'll leave discussions about—between you and the government of the day. I'm here in my capacity as a private—

Mr. John Yakabuski: Okay, so you're questioning the motivation—

Mr. Dalton McGuinty: —my capacity as a private citizen. I'll let you work on that with the government.

Mr. John Yakabuski: Thank you very much, Mr. McGuinty.

So you question the motivation of the opposition members of this committee, and you've asked them to come up with recommendations. Well, the work of the committee is yet to be completed. At the end of the committee's work, I suspect that there will be recommendations. In order to make the recommendations the best and of highest value possible, we have to actually get to the truth, and that's the problem we're having on this committee, is getting to the truth.

Now, you've made some statements here today which I actually find quite troubling. But I'm going to ask you a question—well, no. You talked about staff having a cabinet directive: that when they leave, their email accounts must be purged. Well, that's not the truth. That's not the truth. Their email accounts are removed from the government system, perhaps, but they're archived. They're protected. In fact, Dr. Cavoukian, today, in contradiction to what you've said and to what Chris Morley said last week—and I'll quote from her statement: "There are clear requirements to retain records relating to the following areas: policy development, program development, stakeholder relations, legislative activity, and minister's and Premier's correspondence."

Well, that would make it very clear that someone who leaves your office when you were Premier, or a member of your cabinet—that, no, it isn't wiped clean. It isn't destroyed. It is perhaps removed from the system, but protected in another way, that so through requests for freedom of information or other government reasons or public reasons or the opposition, we actually have access to those records. So I think you should, quite frankly, retract those statements you've made about purging records.

You also talked about—

Mr. Dalton McGuinty: The point I'm making is that the commissioner—I don't disagree with what the commissioner said in that statement. I didn't have the benefit of her testimony here this morning, but I don't disagree with what you've read. What I can say is it remains confusing, because notwithstanding that and the commissioner's interpretation of the law, there is an outstanding protocol. It is driven by the bureaucracy, the civil service. There is a directive that says when you take over somebody's computer, after staff have left, you've got to clean out the email. That's there. That's there.

Mr. John Yakabuski: Peter Wallace, the secretary of cabinet, did not agree with that statement either. That may be somebody's interpretation; maybe it's an interpretation for convenience. But the reality is, and I'll pick up on what Mr. Tabuns said about ignorance of the law, we're talking about senior staff members here. We're not talking about how somebody was just hired the other week. For example, you've got Chris Morley, Sean Mullin, John Fraser, Jamison Steeve: These are people who have worked in your campaign war rooms. They've worked on your campaigns. They are deeply embedded

in the Liberal Party. Do you have emails from any of those that you haven't disclosed to us at this point?

Mr. Dalton McGuinty: You're talking about the elimination of emails, and again, I think it's important to come back to the Information and Privacy Commissioner's report, and, as you know, much was said about my former chief of staff David Livingston. In her report, the Information and Privacy Commissioner says the following: "The CIO"—the chief information officer, I'm assuming—"also stated that at no time—"

Mr. John Yakabuski: Okay, I only have 10 minutes, Mr. McGuinty, and I'm asking the questions.

Mr. Dalton McGuinty: "—did he ever believe—"

Mr. John Yakabuski: Chair, he is not answering the question—

Mr. Dalton McGuinty: "—that the inquiries from Livingston regarding the most effective way to 'wipe clean' the computers on transition were being made for an improper purpose." That's an independent finding.

1430

Mr. John Yakabuski: So let's get back to—

Mr. Dalton McGuinty: No impropriety.

Mr. John Yakabuski:—your reason for having these discussions—the free flow of ideas. Everyone understands that in today's day and age we need the free flow of ideas. In fact, I think we all lament the lack of conversation in people's lives today—a little too much emails and text messages and a lack of conversation.

Mr. Dalton McGuinty: I would agree with you there.

Mr. John Yakabuski: But this is not about curtailing the free flow of ideas. This was about the deliberate, wanton destruction of records that, by law, according to the Archives and Recordkeeping Act—

Mr. Dalton McGuinty: Whose law?

Mr. John Yakabuski:—would have to be kept.

Mr. Dalton McGuinty: Which set of rules?

Mr. John Yakabuski: By the law passed by this government.

Mr. Dalton McGuinty: Which rules?

Mr. John Yakabuski: If that was a Criminal Code offence, which it is not—and maybe that's the problem—we'd be talking about sending people to jail right now, or at least sending them to court to be dealing with criminal offences in front of the courts. Of course, as we know, the OPP is investigating whether or not there were criminal activities from members in your office or other ministers' offices to see if the law, in fact, has been broken. So this is a critical issue, and you cannot just pass it off as saying, "People didn't understand or know the law." They have a responsibility to know the law. At that level, there is no excuse for not knowing the law.

As the privacy commissioner said, for someone to believe that one person, a senior person like David Livingston, Chris Morley, Sean Mullin, Jamison Steeve—for those people to have no—well, she couldn't speak to Jamison Steeve, Sean Mullin; she could only speak to David Livingston and MacLennan. But for those people—because they're the ones she actually investigated—to not have a single email retained that dealt with

one of the hot button issues in your office at the time is beyond anybody's ability to believe. And you come in here today—I say to you with all due respect—expecting us to believe just that.

In fact, you've spun the stories today trying to make it seem like this is no big deal; that there was just a misunderstanding and that the rules aren't clear. I think you have an opportunity here—as I say to you with the deepest respect, Mr. McGuinty—to clear the air on this issue. There were serious breaches of an act of this Legislature committed in your office and in the office of others.

Mr. Dalton McGuinty: Remember, this is an act that you voted against. Let's understand that.

Mr. John Yakabuski: We voted against everything when we were in opposition when you had your majority. You got your way with everything; you had 72 seats. That's a ridiculous argument. Get on with the answer.

Mr. Dalton McGuinty: Secondly, let's back it up for a moment. All right, so, you've caused a review of over one million documents. You've received 130,000 so far—

Mr. John Yakabuski: But you kept the ones that were important.

Mr. Dalton McGuinty: You've received 130,000 so far. I have no idea how many more you intend to obtain. I have no idea how long this committee will sit for, although something tells me it will sit until the next election, because it serves, frankly, your short-term political purposes.

I think, in fairness to staff, we've got to agree with the Information and Privacy Commissioner's finding. They were not aware of the law; I take responsibility for that. We passed this law; we then moved on to other things. So those staffs who were somewhat aware of the law—in the absence of training—were faced with conflicting rules. You, yourself, highlighted one of them: The Information and Privacy Commissioner says you've got to hang on to some of this stuff. Yet there's a directive issued by Cabinet Office saying, no, actually, you've got to get rid of this stuff.

Mr. John Yakabuski: No, the rule is very clear: You and your staff in your office—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. John Yakabuski: —I would have to accept or believe that you made no attempt to understand the law. Would you not think it's the responsibility of senior staff people to know what the rules are and make some attempt to gain an understanding of those rules? I understand on your part, I honestly do, and your position, but your staff should have made it very clear to you.

Peter Wallace made it clear to people as they were leaving: "Hey, wait a minute. You can't go destroying those records. We have a law here; it's called the Archives and Recordkeeping Act." He cautioned Mr. Livingston—or MacLennan; one of the two—who went to see him to say, "How do I get rid of this stuff?" Wallace says, "Wait a minute. You can't do that. It's against the law."

Those people should have known, and it continued to go on from that time on. That's why we're here today looking for more records, because we don't have them because your people have destroyed them, and we can't get them.

Mr. Dalton McGuinty: I can't accept that, of course. But let me just say this about—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

Mr. McGuinty, while I cannot promise, as Chair, this will perhaps be your final invitation to this committee, I do thank you for coming for the second time. We wish you all success and peace of mind as you return to your life as a private citizen. On behalf of the committee, thank you very much.

Mr. Dalton McGuinty: Thank you, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): The committee will take a short recess for about 10 minutes. We have a cascade of motions before—

Mr. Peter Tabuns: Can I ask for 45 minutes, because there will be a media—

The Chair (Mr. Shafiq Qaadri): Twenty minutes, Mr. Tabuns, if you might.

Mr. John Yakabuski: How long do you need?

Mr. Victor Fedeli: We don't need 20 minutes, Peter, do we? If we're not going to have 45, we don't need 20, do we?

Mr. Peter Tabuns: No; 45 is what we need.

The Chair (Mr. Shafiq Qaadri): All right, 10 minutes, and then do you want to do whatever it is that you need to do afterward? Is it agreeable? Ten minutes? Ten minutes sharp, please, gentlemen and ladies.

The committee recessed from 1435 to 1445.

The Chair (Mr. Shafiq Qaadri): Colleagues, we're back in session. We have a cascade of motions. The floor is open to either Mr. Fedeli or Mr. Tabuns. Mr. Tabuns?

Mr. Peter Tabuns: I move that the committee requests that the secretary of cabinet conduct a government-wide search of any and all email accounts ending with "@ontario.ca" that have received and/or sent emails to "tteahen@rogers.com" and "tomteahen@gmail.com" related to the matters currently under the purview of the committee's investigation into the cancellation and relocation of the power plants in Oakville and Mississauga and matters related to the prima facie case of privilege, and that all emails, attachments and responses to and from; in and out; and/or sent and received from the aforementioned email accounts from the period of time starting January 25, 2013, to the end of day on June 25, 2013, be produced and that those documents be tabled with the Clerk of the committee without redaction by 12 noon on July 11, 2013; and

That these documents be distributed by the Clerk of the committee to the respective caucuses and deemed public once distributed; and

That the secretary of cabinet immediately take steps to secure from destruction or deletion any and all electronic files and backups to the aforementioned provisions of this motion.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Discussion before we take the vote? The motion is in order. Seeing none, all those in favour? All opposed? The motion carries.

Mr. Peter Tabuns: And I'm acting to withdraw an earlier deferred motion 3, which I believe all have before—

The Chair (Mr. Shafiq Qaadri): For which the Chair thanks you, Mr. Tabuns.

Now, Mr. Fedeli?

Mr. Victor Fedeli: Thank you, Chair.

I move that the Standing Committee on Justice Policy request from the Premier's office all documents and electronic correspondence stored on the G drive related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received by the following individuals: Mr. Dalton McGuinty, Mr. Christopher Bentley, Mr. Brad Duguid, Ms. Kathleen Wynne, Mr. Chris Morley, Mr. Craig MacLennan, Mr. Jamison Steeve, Mr. Sean Mullin, Mr. David Livingston, Ms. Laura Miller, Mr. John Brodhead, Mr. David Gene and Mr. John Fraser; that the search terms include any and all proxy names including but not limited to the following: Project Vapour, Project Vapor, Vapour, Vapor, Project Vapour-lock, Project Vapor-Lock, Vapour-lock, Vapor-lock, TransCanada, TCE, Greenfield, Greenfield South, Project Fruit Salad, Project Banana, Project Apple, Oakville gas plant, Mississauga gas plant, EIG; that the documents and electronic correspondence be provided by July 9, 2013; and that the documents and electronic correspondence be provided in an electronic, searchable PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. Discussion before the vote? Seeing none, we'll vote. Those in favour? Those opposed? The motion carries, I think.

Could we do that again? Those in favour of that motion? Those opposed? The motion carries, in any case. Next motion?

Mr. Victor Fedeli: Thank you, Chair.

I move that the Standing Committee on Justice Policy request from the Ministry of Government Services all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received, by the following individuals: Mr. Dalton McGuinty, Mr. Christopher Bentley, Mr. Brad Duguid, Ms. Kathleen Wynne, Mr. Chris Morley, Ms. Laura Miller, Mr. John Brodhead, Mr. David Gene, and Mr. John Fraser, including all correspondence from the aforementioned individuals stored on the ministry's RAID servers; that the search terms include any and all proxy names including but not limited to the following: Project Vapour, Project Vapor, Vapour, Vapor, Project Vapour Lock, Project Vapor Lock, Vapour Lock, Vapor Lock, TransCanada, TCE, Greenfield, Greenfield South, Project Fruit Salad, Project Banana, Project Apple, Oakville gas plant, Mississauga gas plant, EIG; that the documents and electronic corres-

pondence be provided by July 9, 2013; and that the documents and electronic correspondence be provided in an electronic, searchable PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Mr. Yakabuski?

Mr. John Yakabuski: If I'm looking at the same motion, there were a number of names missing, and—

The Chair (Mr. Shafiq Qaadri): I would invite the PC caucus to confer internally. Such are the issues with document management.

Mr. Victor Fedeli: Do you want me to read the names as supplied by the—do you want me to read them into the record?

The Chair (Mr. Shafiq Qaadri): Just the ones that are missing, please.

Mr. Victor Fedeli: Let me just repeat that. The following individuals: Mr. Dalton McGuinty, Mr. Christopher Bentley, Mr. Brad Duguid, Ms. Kathleen Wynne, Mr. Chris Morley, Mr. Craig MacLennan, Mr. Jamison Steeve, Mr. Sean Mullin, Mr. David Livingston, Ms. Laura Miller, Mr. John Brodhead, Mr. David Gene and Mr. John Fraser.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli; otherwise, it's not official. Any comments before we vote?

Seeing none, those in favour of Mr. Fedeli's motion? Those opposed? The motion carries.

The last motion, Mr. Fedeli?

Mr. Victor Fedeli: The last motion is: I move that the Standing Committee on Justice Policy meet every Tuesday in July from 9 a.m. to 12:10 p.m. and 1 p.m. to 2:35 p.m.; that each caucus be entitled to call one witness each, and that the order of witnesses and questioning rotate in accordance to the previously established procedure.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Mr. Del Duca?

Mr. Steven Del Duca: Thanks very much, Mr. Chair. I'm actually not quite sure—I'm still a relatively new caucus member on this side. I'm not sure; is this actually in order? The committee reviewed this exact issue not that many days ago. In fact, it was an amendment from the PC caucus that sought that we wouldn't sit throughout July, and many of us on this side—and, I'm sure, on the other sides as well—have now looked at our July schedules, have taken that into account, and have done other things with our July schedules. So I'm just wondering if—

The Chair (Mr. Shafiq Qaadri): I think you're correct in citing that this was agreed to previously, but I guess it's the latest deliberation so, in any case, any further comments before we vote on this motion?

Seeing none, all in favour of Mr. Fedeli's motion? All opposed? I believe there is a tie, and the Chair will vote for the government, so that motion is now defeated.

Is there any further business before this committee? The committee is adjourned.

The committee adjourned at 1451.

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Tuesday 6 August 2013

Journal des débats (Hansard)

Mardi 6 août 2013

Standing Committee on Justice Policy

Members' privileges

Comité permanent de la justice

Privilèges des députés

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 6 August 2013

Mardi 6 août 2013

The committee met at 0902 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

Colleagues, I officially call this meeting to order, the Standing Committee on Justice Policy. I would like to commend you for your presence and dedication to the work of the Ontario Parliament, particularly since the Legislature itself is not sitting.

We have before us our first witness, Ms. Laura Miller. But in light of some of the recent mailings, documents, that have been provided to you through this committee, I will be required, with your indulgence, to read a statement. The statement is as follows:

In light of the last batch of documents provided to this committee, I would like to make something clear before we begin today. It is the Speaker's finding of the *prima facie* breach of privilege that forms part of our terms of reference, and not the process by which that ruling was determined. Please know that I will disallow any line of questioning that I feel is outside of this committee's terms of reference, and that will become more apparent, most likely, as the day proceeds.

Mr. Gilles Bisson: Point of order.

The Chair (Mr. Shafiq Qaadri): I would be happy to entertain that point of order. I was going to ask our legal folks here to just comment on that, and then I'll offer the floor to you, Monsieur Bisson.

Mr. Peter Sibenik: Thank you very much, Mr. Chair. Whenever there has been a referral to a committee based on a Speaker's ruling of a *prima facie* case of privilege, the standard operating procedure of the committee is to investigate the substantive matter that is before it, that is, the *prima facie* matter, not the internal mechanics by which a decision has been made. If a committee is to investigate something other than the *prima facie* matter, it would require an order of the House in order for the committee to investigate, but that is a separate matter in and of itself. So the Chair's statement is basically correct here.

The Chair (Mr. Shafiq Qaadri): Thank you. Monsieur Bisson.

Mr. Gilles Bisson: Well, Chair, I understand full well in regard to once a decision of the Speaker has been

made, there's no ability to debate the decision: The decision's the decision. And in regard to witnesses particularly today—this particular witness, who was trying to influence the Speaker's decision—that is in order. There's just no way in hell that you don't have the opportunity to ask those questions.

The Chair (Mr. Shafiq Qaadri): The Chair's not aware of the way to hell, Monsieur Bisson. But, in any case, the ruling stands. I will just inform members of the committee that should you object to the Chair's ruling, which apparently is on fairly solid ground, you are entitled to in fact appeal to the Speaker. Now, with that I would now welcome—

Mr. Steven Del Duca: Actually, Mr. Chair—

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Del Duca?

Mr. Steven Del Duca: Just before we begin today's proceedings, I wanted to raise what I think is actually a point of privilege. Last Tuesday—and I'm happy to table this with the Clerk—I was quite upset to come across a tweet from a member of the PC caucus, the member from Kitchener-Conestoga, specifically directed at Ms. Laura Miller, our witness who is here today. The tweet is here. I have copies of it if we'd like to pass those around. Specifically, that tweet said, "Let's see if your excuses for the Liberals' #GasPlantScandal change when you're called to testify at Queen's Park."

This tweet was sent to Ms. Miller, as I understand it, before she was even asked to testify or had agreed to testify. It's fairly clear to me that the member was using this legislative committee as a way to, frankly, bully a potential witness. While she has chosen to testify here today despite this attack, I worry that this kind of online intimidation will actually turn off other potential witnesses.

This might not be the exact, right moment to deal with this specific question, but I'm wondering if at some point we can get a ruling on these kinds of online threats—whether the use of this committee's work is an appropriate way to antagonize a potential witness.

The Chair (Mr. Shafiq Qaadri): All right; I will at this point take that under advisement. I would invite you to please submit the documentation. A ruling will be forthcoming. Now, with that—yes, Mr. Bisson?

Mr. Gilles Bisson: While you're doing that, you maybe want to look at July 29, a tweet from Laura Miller that essentially calls this committee a partisan witch hunt.

The Chair (Mr. Shafiq Qaadri): Thank you for that, Mr. Bisson. If there's any further—yes, Mr. Delaney.

Mr. Bob Delaney: Yes, there is one clarification comment here. It would be one thing if Mr. Harris had a personal Twitter account, but it is sent out from an MPP Twitter account, and as such is functionally the same as Mr. Harris using legislative resources in a personal attack on someone who is a witness.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Same comment: Stands under advisement; ruling forthcoming. We'll deal with the issue of the tweets and all its various subject matters.

MS. LAURA MILLER

The Chair (Mr. Shafiq Qaadri): I'd now invite Ms. Laura Miller to please be sworn in by the Clerk.

The Clerk pro tem (Mr. Katch Koch): Ms. Miller, do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Ms. Laura Miller: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Miller. As you know the drill very well, you have five minutes to make your opening address. I invite you to please begin now.

Ms. Laura Miller: Chair, I do have a question about one of your comments about some of the documents that were produced. My opening remarks did reference the email in question—the one that Mr. Bisson has referred to. Would you prefer that I strike that?

The Chair (Mr. Shafiq Qaadri): Ms. Miller, the floor is yours.

Ms. Laura Miller: All right; perfect.

Good morning, and thank you for the invitation to appear. Before we begin I would like to address the recent production of emails and documents from my time in the Premier's office. Hundreds of pages were provided to members of this committee to assist with the task at hand, which, as I understand it, involves the review of the production of documents by the Ministry of Energy and the Ontario Power Authority and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville plants.

By and large, the documents produced do confirm the facts laid out by the former Premier, the former Minister of Energy and my colleagues in their committee appearances. That is: (1) Premier McGuinty made the decision to relocate the gas plants; (2) All of our facts and figures were provided by the Ontario Power Authority, either directly or indirectly by the Ministry of Energy; and (3) The government was prepared to provide the committee the relevant documents.

While it is likely beyond scope—I hope that you'll indulge me—I would like to take a moment to discuss the other document, the red herring of an email exchange that piqued the opposition's interest early last week.

Mr. Victor Fedeli: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I'd appreciate if you could allow the witness to have her time.

Mr. Victor Fedeli: But how could she discuss that when we can't? She's about to discuss something you've asked us not to discuss. So it's a point of order and I'd like you to rule on our point of order. If she can discuss it, certainly we're going to be able to rebut that.

The Chair (Mr. Shafiq Qaadri): I appreciate the logic of your question, Mr. Fedeli. It is her statement, so I'll let it stand. Please continue.

Ms. Laura Miller: Okay. The opposition had a microphone and an audience last week; this week I have a microphone and an audience. Obviously I will have the same reach and impact here that you had last week when you misinterpreted and torqued my words.

0910

In the weeks leading up to the particular email exchange, the PCs were deploying, in my opinion, hostile tactics. Through press releases, press interviews and pronouncements in the House, the PCs threatened the then Minister of Energy, Chris Bentley, his integrity, his livelihood and his liberty.

On September 13, 2012, Speaker Levac asked the three House leaders to find a path forward to satisfy the request of estimates—that is, the production of documents by the Ministry of Energy and the Ontario Power Authority by Monday, September 24. Inspired by Milliken's ruling on Afghan detainees, the Speaker said that he had immense faith, if both sides exercised sobriety.

On September 21, 2012, three days before the Speaker's deadline, the PCs announced that, even if the government met the deadline for document production, they would proceed with a contempt motion against Mr. Bentley, and let's remember what they meant by that: potential disbarment and a threat of incarceration. As far as I was concerned, the PC statement was definitely not in keeping with the spirit of the Speaker's ruling, and, just like a hockey player who calls out unfair plays to the referee, we would call out the PCs' unfair play to our referee, the Speaker.

Now, much in that quickly written email exchange has been misinterpreted and torqued, as I mentioned, and I look forward to correcting the record today.

First, my intention was to inform the Speaker that we were unhappy with the PCs' statement, that he had asked the three parties to work together and that clearly was not happening, and that Chris Bentley deserved much better than this as an elected official.

Second, when I wrote that Dave Gene was not confident, it was that he was not confident that the outcome would be fair to Chris Bentley. Coming out of his conversation with the Speaker, Dave Gene told me that the Speaker said the people will decide on this, and given that we were the minority, that did not bode well for Chris Bentley. That ultimately proved to be true.

Again, reaching out to the Speaker is no different than calling out an unfair play to a referee, particularly when

that unfair play could cost a good man, a very honourable man, his integrity, his livelihood or his liberty.

Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Miller. I will now offer the floor to the PC side. Mr. Fedeli, you have 20 minutes.

Mr. Victor Fedeli: Thank you, Chair.

Ms. Miller, I'd like you to look at the documents we've handed out. Have the documents been distributed to everybody?

Ms. Laura Miller: I don't have the documents.

Interjection.

Ms. Laura Miller: Thank you.

Mr. Victor Fedeli: The front page, Liberal gas plant scandal document 1: This is an email from you, written on Wednesday, October 24, 2012. The first line says—and you typed this email?

Ms. Laura Miller: Yes.

Mr. Victor Fedeli: "I have completed a search. I have no responsive emails." Can you tell me what this was in reference to?

Ms. Laura Miller: Well, based on this email here, we had been requested to search, based on the FOI request, "emails, memoranda, Outlook calendar invitations making reference to 'Project Vapour' or 'Project Vapor' during the calendar years of 2010, 2011 and 2012."

Mr. Victor Fedeli: So in this response to Mr. John O'Leary, manager of legislative issues, Office of the Premier of Ontario—he has asked you to look for emails, memoranda, Outlook calendar invitations making reference to "Project Vapour," spelled with a U, or "Project Vapor," just spelled with O-R, during the calendar years of 2010, 2011 and 2012. This is what he's asked you to return to the office of the freedom of information. Is that correct?

Ms. Laura Miller: Sorry. The office of the freedom of information?

Mr. Victor Fedeli: The freedom-of-information request. Is that correct?

Ms. Laura Miller: He has asked us to do a search and to respond to him, yes.

Mr. Victor Fedeli: So he has asked you for Project Vapour documents, including your Outlook calendar. It was for a freedom-of-information request; I don't know who this was from, to be perfectly frank. And you responded, "I have completed a search. I have no responsive emails." Is that accurate?

Ms. Laura Miller: Yes.

Mr. Victor Fedeli: Do you still stand by that email?

Ms. Laura Miller: Yes.

Mr. Victor Fedeli: So if you go to Liberal gas plant scandal document 2, the next page, in the "To," this is from Jorge Gomez to you or one of the recipients; subject, "Project Vapour." This was on October 17, 2012.

Would you not think that an email in which the subject is written "Project Vapour" within 2012 was responsive to the request?

Ms. Laura Miller: Well, I guess what I would say is that, having looked at this document, which is a PC press release—

Mr. Victor Fedeli: No, no; we're not talking about the content. The subject line is "Project Vapour."

Ms. Laura Miller: But the content is very important because it is a press release from—let's see—the PC caucus, so I would have considered this to be a transitory record and I would have deleted it.

Mr. Victor Fedeli: Transitory? "Gang," we are to ask "to convene on a call at 8:30 ... on Vapour." So you're talking about Project Vapour. You have an email here that is responsive on October 12 to the freedom of information, yet you told the freedom-of-information request that you have no responsive emails.

Let's go to gas plant scandal doc 2.

Ms. Laura Miller: Right. I think it's important, Mr. Fedeli, to note that when you say, "We're convening a call," that was actually at the top of the press release issued by your caucus. So it's a transitory document.

Mr. Victor Fedeli: The content is irrelevant. You have—well, look. We don't have to belabour this one.

Ms. Laura Miller: Well, Mr. Fedeli—

Mr. Victor Fedeli: You're listed in almost 1,000 emails; almost 1,000 mentions of your name in 2010, 2011 and 2012.

Let's just go to the next page, then. Gas plant scandal doc 3—

Ms. Laura Miller: Yes, but, Mr. Fedeli—

Mr. Victor Fedeli: Laura Miller is the organizer. This one is a meeting of Project Vapour-lock, but the word "vapour," spelled O-U, is in this. You don't feel that was responsive. You sent this to John Brodhead, Neala Barton, John O'Leary, David Phillips, Wendy McCann, Emily Jephcott.

Let's go to gas plant scandal document 4: another meeting. This time the meeting status is accepted. This is 2012. Let's go to gas plant scandal 5; another one. I could go on and on. There are 1,000 times you're mentioned here.

Let's look at the gas plant scandal doc 6. Let's look at that one. Now, this one is to do, Chair, with the Speaker's letter, but I won't be referring to that at all. I'm looking to the freedom of information. Gas plant doc 6: Let's look at the second-last page. It's listed as number 21 down at the bottom. This is page 4 of 5. "Controversy over the gas plants."

Ms. Laura Miller: I'm sorry, Mr. Fedeli. I don't know where you are.

Mr. Victor Fedeli: I'm at Liberal gas plant scandal doc 6, page 4 of 5. If you look down at the bottom, it's page 21.

Ms. Laura Miller: Sorry; I seem to have an incomplete—mine goes from one page of doc 6, right back to doc 1. Let's see if this one is a complete set. Hold on.

Mr. Victor Fedeli: It's elsewhere in the package—

Ms. Laura Miller: No, sorry; it's later on in the package. I think there was a duplication.

Mr. Victor Fedeli: It's labelled as—actually, down on the bottom of the pages, it's labelled as page 21, down at the bottom. It was the typing. You see that down there?

Ms. Laura Miller: Sorry, which one?

Mr. Victor Fedeli: Twenty-one.

Ms. Laura Miller: Yes, I see 21.

Mr. Victor Fedeli: The second-last sentence: "Controversy over the gas plants." Page 20, in the middle: "Manage the gas plant issue." This document here is October 2012, and you're in it. This is a responsive document. You told the freedom-of-information people you have no responsive emails, yet in the 1,200 that we just got—I've got a dozen here—just out of 1,200, never mind the 110,000 documents that we received where your name is mentioned 1,000 times, and you tell the freedom-of-information office, "I have no responsive emails." How do you explain these emails that are responsive that you claim don't exist? Was it because you deleted your emails? Can you tell us if you did delete your emails?

Ms. Laura Miller: First of all, Mr. Fedeli, I think it's really important, when you say you have thousands of emails from 2010, 2011 and 2012—

Mr. Victor Fedeli: We have your name in thousands of emails.

Ms. Laura Miller: I think it's important to note that in 2011, I was actually on an unpaid leave from the government, so I find it unusual that you would find—

Mr. Victor Fedeli: That makes it even more interesting that there are so many in a shorter period of time.

Ms. Laura Miller: —that you would find emails in 2011—

Mr. Victor Fedeli: Your name is in there 1,000 times.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, you need to let the witness answer the question at some point.

Mr. Victor Fedeli: Well, she's going to have to answer to somebody—perhaps the legislative group here—on why you told the freedom-of-information office that you have no responsive emails when I have produced half a dozen right off the bat.

0920

Ms. Laura Miller: I'm happy to respond if you'd give me an opportunity, Mr. Fedeli.

Mr. Victor Fedeli: Well, you're going to have to respond to somebody soon.

Ms. Laura Miller: Mr. Fedeli, I think that the document in question, gas plant document number 6—I would have considered this political communication. I would have deleted it.

Mr. Victor Fedeli: Does it not say "vapour" or "gas plants"?

So you deleted email. Tell me what other email you deleted, then.

Ms. Laura Miller: It does, but it's from Wednesday, October 17.

Mr. Victor Fedeli: So when you said you have no responsive email, it is because you deleted them? Is that what you're saying to me?

Ms. Laura Miller: Because it was a transitory or political document, I would have deleted it, which is completely within the rules.

Mr. Victor Fedeli: When did political documents—so all these other documents, the ones about the Speaker, those aren't political documents, then?

Ms. Laura Miller: I would consider those political documents.

Mr. Victor Fedeli: Did you delete that one?

Ms. Laura Miller: I would have deleted that one, yes.

Mr. Victor Fedeli: So how did we get it?

Ms. Laura Miller: I'm not sure.

Mr. Victor Fedeli: I can tell you how we got it. This is in the 1,200 in those tapes that were discovered. Your document came to us through that process. So how many more emails did you delete?

Ms. Laura Miller: But I'm glad that you found those documents, because—

Mr. Victor Fedeli: I'm very glad I found those documents.

Ms. Laura Miller: —the vast majority of those documents confirm what we have been saying about the gas plant relocations.

Mr. Victor Fedeli: So let's jump to a whole separate freedom-of-information request, and this one I will say who it's from. It's from Tom Adams.

Ms. Laura Miller: Okay. Is it in this package?

Mr. Victor Fedeli: Yes. You're going to eventually get to Liberal gas plant scandal document 7.

So Tom Adams—I have his appeal here—on November 30, 2012, asked for all email related to this gas plant scandal from—now these dates are very important—January 1, 2012, through October 1, 2012. It was a very limited time period. This is not going to require a whole lot of effort. This is the first nine months of the year.

Your email, on gas plant scandal number 7, is from you to a Lauren Ramey, Office of the Premier. She is asking, "Please search your records for anything responsive.... January 1 through October 1, 2012 ... associated with the gas-fired power plants." You write back again, "I have no records." You have no records for anything to do with the gas plant in those first nine months of 2011.

Well, let's go to gas plant scandal document number 8, the very next one. Laura Miller is responding to a letter from Jim Wilson, September 21, 2012, "concerning the Mississauga and Oakville power plants." Here it is: September 21, you're responding to an email—again, it talks about the Speaker and his prima facie finding, but you're responsive to "concerning the Mississauga and Oakville power plants." How can you tell the freedom-of-information office you have no records when there's one?

Let's go to gas plant scandal document number 9. This one is from Don Guy to you, and he brings in Brendan McGuinty, and you're talking about "gas plant docs." The last page, page two of nine: "gas plant docs." This is email from September 2012—within that period that you are asked to turn over your email—and yet you have said,

“I have no records.” How can you have no records when I have your records?

Ms. Laura Miller: Because they were political and transitory emails, and according to the rules, there are 99 reasons—there are reasons that you’re able—

Mr. Victor Fedeli: Well, they’re not transitory.

Ms. Laura Miller: —that you’re supposed to delete documents, and these documents would fall under those reasons.

Mr. Victor Fedeli: So we had your party—I’ll get back to transitory in a second, but we had your own party read to us one day what transitory is. That’s the “Can you go for a coffee, Tom?” “No, I can’t, Jennifer.” That’s how they describe transitory, and that’s why, allegedly, so many thousands of emails were deliberately deleted by Liberals.

So if that’s transitory, let’s then go back to Liberal gas plant scandal document 3. Again, this is a meeting re: Vapour-lock. This is not political now; this is not transitory. This is you as the organizer—you organized a meeting on Vapour-lock on 07/06/2012. Gas plant scandal 4, 07/04/2012, “Meeting re: Vapour-lock.” And 07/17/2012, Tel/Con re: Vapour-lock.

You are to turn over all files associated with gas plant, including—including—Outlook calendar records, which I’ve clearly presented are yours, yet you have said on two occasions now to freedom of information, “I don’t have any.” How do you justify that sentence to freedom of information?

Ms. Laura Miller: Do I have an opportunity to respond now?

Mr. Victor Fedeli: Well, let’s hear it.

Ms. Laura Miller: So I can’t really speak to why my Outlook calendar records would not have shown up in a search. I did do a search, as we were required, on those terms, and none of this came up. As to why, I can’t really speak to why. Did I do an improper search? I definitely know I did a proper search of my inbox and my sent items. In terms of the Outlook calendar, I can’t speak to why those documents didn’t come up.

Mr. Victor Fedeli: So why do you think it is that I have your email and your Outlook calendar when you couldn’t find it?

Ms. Laura Miller: Well, I think that you have the Outlook calendar because I think some of my colleagues—it looks here like some of my colleagues in the Premier’s office and the government House leader’s office, when they did their search, did find these records, and they provided them to whoever it was who was doing the freedom-of-information request.

Mr. Victor Fedeli: So that’s true for scandal doc 3 and 4, but what about doc 5? That’s from you. You found it.

Ms. Laura Miller: Sorry, which document was that?

Mr. Victor Fedeli: Doc 5. The first one is from Wendy McCann; the second one is from Kevin Spafford. The third one is from you. Why did you tell the freedom of information you have no responsive documents when you indeed did have documents?

Ms. Laura Miller: I believe that at the time that I did the search, no records came up.

Mr. Victor Fedeli: You’re named in more than 1,000 emails, and you are sitting there under oath and want us to believe that you told them—the dog ate them? What? What did you—why would you say, “I have no responsive emails”? Did you lie to these people?

Ms. Laura Miller: No, I absolutely did not.

Mr. Victor Fedeli: I think you lied.

Ms. Laura Miller: I think it’s important to remind you, Mr. Fedeli—

Mr. Victor Fedeli: I think you lied to these people.

Ms. Laura Miller: —that I am under oath.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Ms. Laura Miller: I am under oath right now, and that might not mean something to you, but it means something to me.

Mr. Victor Fedeli: Oh, it means a lot to me. I have listened to dozens of you—

Ms. Laura Miller: It means something to me.

Mr. Victor Fedeli: —dozens upon dozens—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Mr. Victor Fedeli: Then, under oath, tell me, did you have responsive documents to either of these two FOI requests? Yes or no.

Ms. Laura Miller: At the time I did the research, no.

Mr. Victor Fedeli: So when the review has been undertaken, May and June—June 27—do you now admit that you have documents?

Ms. Laura Miller: I’m sorry; what’s the review of June 27?

Mr. Victor Fedeli: This is the inquiry, the appeal process, that Tom Adams is going through.

Ms. Laura Miller: Which document is this?

Mr. Victor Fedeli: You don’t have the document. This is a public document.

Ms. Laura Miller: This is a public document. Sorry, what’s the question?

Mr. Victor Fedeli: It’s a public document, “Representation of the Premier’s office”: Did the Premier’s office conduct a reasonable search? Did the institution contact the requester? It goes on and on, and it says, “Ms. Forrest”—I don’t know her first—

Ms. Laura Miller: Jamie.

Mr. Victor Fedeli: Somebody Forrest met with somebody else to discuss the approach to the search. Ms. Ramey would coordinate the search in the records. Nine senior staff were identified as potentially having responsive records. These staff were selected because of their senior roles.

You’re one of the nine; you’re number five of nine. It says here, “Five staff members confirmed”—confirmed—“to Ms. Ramey in writing that no records resulted from their search. In addition, no records were located by Ms. Codd-Downey in the former Premier’s files.” So how is it that I have records?

Ms. Laura Miller: Mr. Fedeli, if I had the opportunity to do a search and access deleted emails on a server, then I would have had responsive documents.

Mr. Victor Fedeli: So what you're saying is you deleted your emails to do with the gas plant? That's why you have none—

Ms. Laura Miller: I would delete political, personal and transitory emails.

Mr. Victor Fedeli: Okay. These are not political or personal. There are emails that I've brought forward to you that are clearly gas-plant-related documents, including your Outlook calendar. Is it systemic through the Liberal associates to delete their email? Is that why we don't have any from you? You deleted them and felt safe to tell the freedom-of-information people, "I don't have any," because you did tell the truth: You didn't have any; you'd deleted them all? All 1,000?

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Ms. Laura Miller: When I delete emails, I do not have the ability to go back. Perhaps it's a lesson learned that the government can take back, in terms of maybe it shouldn't be political staff who search their emails; maybe it should be an individual in the civil service who has access to inboxes and sent-mail folders and deleted archives—whatever it is—to conduct the search. But at the time—

Mr. Victor Fedeli: You know the lesson learned? The lesson learned is, you thought you deleted your emails permanently and they weren't deleted permanently. Only when the Ministry of Government Services looked "under the hood" did they find your emails that you thought were safely deleted. Is that true?

Ms. Laura Miller: And I'm glad that they found them. I'm absolutely glad that they found them.

Mr. Victor Fedeli: I'm glad they found them, too, because you told the freedom-of-information request you had no responsive records.

Ms. Laura Miller: Well, let's be frank. If I had those records—

Mr. Victor Fedeli: You had none because you deleted your emails.

Ms. Laura Miller: If I had those records, I would have provided them to the freedom-of-information request.

Mr. Victor Fedeli: I have the records now; don't worry. We have them now. We know you're in this up to your forehead in this gas plants scandal.

Ms. Laura Miller: I don't really feel that I am, but thank you for that.

Mr. Victor Fedeli: Well, the 1,000 times you're mentioned—you're one of the pivotal people in this gas plant scandal, in the spin of it all.

Ms. Laura Miller: "Pivotal"?

Mr. Victor Fedeli: You're organizing meetings about it.

Ms. Laura Miller: Can I quote you for my bio?

Mr. Victor Fedeli: Yes, you can.

Ms. Laura Miller: That's great.

Mr. Victor Fedeli: It won't be a very impressive bio when you're talking about gas plant scandals—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, could we—one minute.

Mr. Victor Fedeli: Do you have any more comments about why you deleted your emails, the non-transitory and the non-political emails?

Ms. Laura Miller: I do not see any document here that is non-transitory, non-political or non-personal.

Mr. Victor Fedeli: Is it systemic through the Liberal Party to delete your emails?

Ms. Laura Miller: Or that isn't a duplicate.

Mr. Victor Fedeli: Duplicate? We never had any from you—zero—never mind duplicate. "I have no responsive emails": Did you lie to the freedom-of-information—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, this is not an appropriate form of question to ask a witness.

Ms. Laura Miller: I am under oath.

Mr. Victor Fedeli: I have two documents that say, "I have no emails," "I have no responsive emails," and yet in the little sampling of 1,200, I've pulled up a dozen. When I go through the 110,000, how many times am I going to see your name?

Ms. Laura Miller: Mr. Fedeli, there have been other freedom-of-information requests where I did provide responsive records.

Mr. Victor Fedeli: Not to the gas plants scandal. You deleted all those; you've told us that.

Ms. Laura Miller: Because, for the most part, they were transitory or political.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson or Mr. Tabuns?

Mr. Peter Tabuns: I'll be leading off. Thank you very much, Mr. Chair.

Good morning, Ms. Miller.

Ms. Laura Miller: Good morning, Mr. Tabuns. How are you?

Mr. Peter Tabuns: Not bad.

Ms. Laura Miller: Did you have a nice weekend?

Mr. Peter Tabuns: Yes.

The documents that we've been provided with—and we will see where the Chair draws the line on questioning. In the package of documents you have, document 9, way down in here, there's an email from you to Don Guy, Brendan McGuinty, Chris Morley and Dave Gene. You've got a line here: "Dave is putting the member from Brant on notice that we need better here." What did you mean by "we need better"?

Ms. Laura Miller: If I refer back to my opening statement, it's that we were very unhappy. If I can just describe to you how unhappy we were with the circumstances: We thought that there was a glimmer of hope with the Speaker's ruling. The spirit of his ruling was that everyone would come together, work together—

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, I will, as you have correctly anticipated, rule that particular question out of order.

Mr. Peter Tabuns: I'm sure there are others in this room today who will ask the question later.

Mr. Gilles Bisson: No, Speaker, Speaker—

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson.

Mr. Gilles Bisson: For the record, what's at question here is, somebody tried to influence a decision of the Speaker. That is a matter that is a purview of this committee. I don't accept that we're not able to ask questions with regard to what it was, because what this committee is charged with is trying to determine what happened with the release of documents. Why is it that when the estimates committee asked for documents, the minister did not release those documents, and who else was involved? The series of questions that we want to ask are related to that.

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson, I appreciate the gymnastics involved. My understanding is that we are here to consider the product of the ruling and not the process.

Mr. Gilles Bisson: Well, let me ask this question, Chair.

The Chair (Mr. Shafiq Qaadri): Sure.

Mr. Gilles Bisson: Do you mind?

Mr. Peter Tabuns: Ask a question.

Mr. Gilles Bisson: The question is simply this: There was a decision made by the Speaker which we cannot question, because it's clear, as per the precedents, that the Speaker's ruling is a decision that cannot be appealed—and we understand that. But what's at question here is this: You obviously were trying to get the Speaker to do something. It sounds to me that if the decision had already been made that in fact there was a *prima facie* case of contempt when the documents were not released—were you trying to ask the Speaker at the time of the meeting—because, if you remember, the Speaker had said it was up to the House leaders to try to figure out how to release the documents. Was the purpose of your meeting in order to try to—how would you say?—lessen the impact of how those documents would be released, and which documents would be released? Because that certainly is a matter before this committee.

Ms. Laura Miller: No. I would say a few things. First of all, while I disagree with your characterization of what I was trying to do, I'm happy to answer questions about that. I think last week, a number of elected officials stood up and said things and misinterpreted and torqued my words, so I do welcome the opportunity to let you know what I was trying to do.

In terms of what I think we were trying to do, and I do have the Speaker's ruling here—the spirit of his ruling is that the House leaders had to work together. The spirit was that the House leaders had to work together. It became clear, three days before the deadline, which I think was Monday, September 24, that the PCs were no longer playing ball. They were no longer playing ball and they had decided that they were going to pursue—

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, Ms. Miller, I am directed once again by the powers that be, which—

Mr. Gilles Bisson: But, Speaker, this committee is charged with trying to determine if there was a *prima*

facie case of contempt when it came to the release of the documents that were requested by the estimates committee. Clearly, the decision of the Speaker had already been made when this particular email exchange was—

The Chair (Mr. Shafiq Qaadri): Correct.

Mr. Gilles Bisson: And what was at hand is the Speaker had charged the House leaders to try to find a way to release those documents. It was apparent, and I agree with her, that at that point it didn't appear as if the House leaders were able to come to an agreement on how to release the documents, so these questions are perfectly in line with what this committee is all about. Was the purpose of the meeting in order to figure out how not to release the documents in some form to the House and to the committee? That is directly related to what this committee is all about. Documents were refused to be released and there was a meeting with the Speaker at the time when the House leaders were charged to determine how those documents were to be released. When I read something that says, "Dave is putting the member from Brant on notice that we need better here," is the "better" having to do with the release of documents? That's a perfectly logical question and in keeping with the committee.

The Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. Merci.

Mr. Peter Tabuns: I do hope you're extending our time, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson, apparently, the understanding or the issue should be considered in the following light: One, the ruling came from the estimates committee, which took place about a month previous to what you're speaking about, and the *prima facie* breach of privilege ruling I guess you can consider as day one, or the initial kind of trigger of the committee. All questions that are of relevance to the scope of this committee and its mandate follow from that and not with regard to the ruling.

Mr. Peter Tabuns: And in fact, I'm asking—we are asking—questions that follow the decision and finding of the Speaker, because this happened in the week after the Speaker in fact made his ruling. Not correct, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): I may be undercaffeinated to fully consider all of this, but in any case—

Mr. Peter Tabuns: Why don't you take a minute to consult with the Clerk and then we'll go back.

Mr. Peter Sibenik: Yes, documents or emails that occur after the Speaker's ruling are not really relevant to the matter that is before the committee. We're talking about two things here: one, the *prima facie* case of privilege, the alleged non-release of documents, and number two, the second order of reference that came from the committee about the relocation and cancellation of the gas plant. The documents—

Mr. Gilles Bisson: And also any other matters relevant to the—

Mr. Peter Sibenik: There was a point of congealment at the time of the Speaker's ruling. Everything that really

occurred after that is not really relevant to the matter that is before the committee—that is, on the date that those orders of the House were passed.

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Mr. Gilles Bisson: Is it or is it not one of the things that this committee has to deal with: Why were those documents not released when they were requested, and who was involved? Is that not what this committee is all about? Yes, it is.

The question that we're asking the witness is a really simple one: Was the purpose of the meeting that's referred to in this email a discussion with the Speaker about how those documents are to be released? That is perfectly related to the mandate of this committee.

Mr. Peter Sibenik: If the emails occurred after the date of the order, the answer is no.

The Chair (Mr. Shafiq Qaadri): That's the ruling, Monsieur Bisson.

Mr. Gilles Bisson: No. I disagree.

The Chair (Mr. Shafiq Qaadri): Once again, I would simply advise you that if you wish to challenge that ruling, that is your parliamentary right—

Mr. Gilles Bisson: Well, we know what that means, and I'm not about to challenge the Chair at this point.

The Chair (Mr. Shafiq Qaadri): —and that goes to the Speaker.

Mr. Gilles Bisson: We're not going to do that right now.

The Chair (Mr. Shafiq Qaadri): In any case, the floor is now yours.

Mr. Peter Tabuns: The Chair may or may not rule against me on this question. Why were you referring to the Speaker as “the member from Brant,” and not referring to him with the dignity and respect that his position required? It was as if you were referring to a wayward member of your caucus.

Ms. Laura Miller: I don't view it that way. I think that the Speaker is the Speaker because he was elected amongst his peers—MPPs who represent different geographic locations. It's not unusual for us to refer to members as “the member for”—the member for Vaughan, the member for York South–Weston. In retrospect, if I hadn't been so quick to respond, perhaps I would have called him the Speaker, but it's just the way that I refer to members—the member for Toronto–Danforth. I apologize if that gives offence. I didn't think that it would. Sometimes I referred to the Premier as the member for Ottawa South.

Mr. Peter Tabuns: When you referred to “we need better here,” you were talking about the Liberal Party of Ontario?

Ms. Laura Miller: No.

Mr. Peter Tabuns: Who were you talking about?

Ms. Laura Miller: I was talking about the Legislature, and I was talking about the MPPs. I was speaking about, in particular, Chris Bentley, the then member for London West.

Mr. Gilles Bisson: That's a pretty big stretch.

Mr. Peter Tabuns: That's a very big stretch, I have to admit, because frankly, we on the other side—

Ms. Laura Miller: Absolutely.

Mr. Peter Tabuns: —felt that the Speaker should have been ordering release of the documents the day he made his first ruling, and not giving a week's extension.

Ms. Laura Miller: There's a difference of opinion there, for sure.

Mr. Peter Tabuns: Yes, substantially. I believe you're speaking for the Liberal Party.

Was Dave Gene the only staff person you're aware of to meet with the Speaker about his ruling?

Ms. Laura Miller: First of all, I'm not sure that they met. I know that they spoke—

The Chair (Mr. Shafiq Qaadri): Monsieur Tabuns, for various cautionary reasons, I will have to disallow that particular line of questioning.

Mr. Peter Tabuns: Did Mr. Gene brief you after his meeting with the Speaker?

Ms. Laura Miller: We spoke, yes.

Mr. Peter Tabuns: What did he tell you?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, that question is also disallowed.

Mr. Peter Tabuns: My goodness, you're thinning out the questions this morning, Chair.

The Chair (Mr. Shafiq Qaadri): I do apologize.

Mr. Peter Tabuns: What were the ramifications for the Speaker if he didn't change his mind?

Ms. Laura Miller: There are no ramifications for the Speaker.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: I assume, Chair, that you're extending our time because you had to confer at length with—

The Chair (Mr. Shafiq Qaadri): You assume incorrectly, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, that's not fair; you know that. That being the case, though, I'll turn it over to my colleague Mr. Bisson.

Mr. Gilles Bisson: Clearly, the government didn't want to release the documents to the estimates committee. True or not true?

Ms. Laura Miller: Not true.

Mr. Gilles Bisson: So that's why the government refused to release the documents?

Ms. Laura Miller: I believe that, at the time—and it wasn't just the then Minister of Energy, but also the then Premier who said that it's not a matter of if, it's a matter of when.

Mr. Gilles Bisson: The Premier, then, was involved in the decision-making around not releasing the documents?

Ms. Laura Miller: I believe that at the time—you're referring to estimates committee in May. Is that correct, Mr. Bisson?

Mr. Gilles Bisson: Yes, that's where I'm at with this point.

Ms. Laura Miller: At that point in time, I believe that legal counsel had advised the OPA and the Ministry of

Energy that it would not be advisable, in the middle of a commercially sensitive negotiation, to—

Mr. Gilles Bisson: So the Premier was—

Ms. Laura Miller: May I finish?

Mr. Gilles Bisson: So the Premier was in full knowledge of the decisions around not releasing the documents to the estimates committee?

Ms. Laura Miller: I don't believe that he was.

Mr. Gilles Bisson: Well, that contradicts previous evidence that we got from Mr. Morley, who was a former chief of staff, when he says it's entirely appropriate. He was aware of anything that went on before the Legislature and his office. So who's telling the truth here, Mr. Morley or you?

Ms. Laura Miller: Mr. Morley probably has a better indication of what was happening at that time.

Mr. Gilles Bisson: Okay. So is it fair to say that the Premier was in knowledge of what was going on when the entire process of events was taking place when it came to the release of documents to estimates?

Ms. Laura Miller: I don't know if I can answer that question.

Mr. Gilles Bisson: Well, you should answer it one way or another, because I've got the former chief of staff who says he was in knowledge of everything, and I'm asking you the question: Was his office, and was he, particularly, briefed on what was going on when it came to the release of documents?

Ms. Laura Miller: I can say this, that our office was aware. As a branch of our office, we had the government House leader's office, and they were obviously quite involved. I can say that towards the—because up until when this first happened, when estimates first met, I had responsibility for intergovernmental affairs. In June, I assumed responsibility for communications, so I can advise that throughout the summer, as things started to heat up, the Premier was aware, I think, of what was happening with documents, but I can't speak to the time period in around May.

Mr. Gilles Bisson: So back to the discussion that you had—Mr. Gene had—with the Speaker: Was that in order to try to lessen how the documents would be released?

The Chair (Mr. Shafiq Qaadri): Question disallowed, Mr. Bisson.

Mr. Gilles Bisson: I ask the question again.

The Chair (Mr. Shafiq Qaadri): I disallow again.

Mr. Gilles Bisson: This whole committee, Speaker, is about the release of documents. This is what this committee is all about. A Speaker's decision was given in regard to the documents, that they be released, and the House leaders were charged with a week in order to come up with how. It's pretty clear to me what was going on. They were trying to influence the Speaker in some way about how those documents were to be released. So I ask the question again: Was that the reason why you guys were meeting with the Speaker?

The Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. A third time, disallowed.

Mr. Gilles Bisson: Well, I'm going to ask the question a fourth time.

The Chair (Mr. Shafiq Qaadri): Then I will invoke $n+1$ mathematical law of induction.

Mr. Gilles Bisson: And I'm going to go to the square root of pi or whatever you want me to do.

The point is that this committee, Speaker—and I ask the question to you again, Ms. Miller. It was clear that the Ministry of Energy, and from your own statement the House leader's office and the Premier's office, were of the view that those documents were not to be released when requested by the estimates committee. There's a decision by the Speaker that those documents need to be released, but how they're to be released is to be discussed with the House leaders. It seems to me, when you're trying to put him on notice that you need better here, you're talking about the release of documents. So my question is, was that the reason why you were meeting with the Speaker back in—I guess it was September 21?

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson, in the time you have remaining, you are certainly welcome to ask whatever you wish, whether it's allowed or not—disallowed. The other issue that is then triggered is that Ms. Miller is directed not to answer the question that is disallowed.

Mr. Gilles Bisson: Well, I would argue it is directly related, Speaker—Chair, I should say—

The Chair (Mr. Shafiq Qaadri): I appreciate that, Mr. Bisson.

Mr. Gilles Bisson: —because this committee is all about the documents, and something here doesn't—anyway, we'll leave that alone as of this point.

Do you have anything else?

The Chair (Mr. Shafiq Qaadri): You have four minutes.

Mr. Peter Tabuns: We have four minutes?

Mr. Gilles Bisson: Let me ask you this, then: According to your own tweets—on the 29th of July, I guess, you're exchanging tweets with former Speaker Stockwell and others—you refer to this committee as a partisan witch hunt. What did you mean by that, exactly? You find this is just a trivial little thing; we're just wasting a little time here?

Ms. Laura Miller: No, I don't think it's trivial at all. One of the first witnesses that appeared before the committee was the Honourable Peter Milliken. I think Peter Milliken made it clear in his testimony that—let me just pull this up here. He said that if Chris Bentley “complied with the demand for production of the documents, I would” think that would have ended the matter, yes. So the fact that the government did produce the documents by the deadline and it was up to the MPPs to vote on the motion, and the majority, being the opposition, voted for this committee—I don't how else to perceive it, because at the end of the day, we have one of the leading experts in parliamentary privilege, according to the member for Cambridge—

Mr. Gilles Bisson: Let me ask you this question: Who is it that wanted this committee to be formed?

Ms. Laura Miller: Sorry?

Mr. Gilles Bisson: Who is it that wanted this committee to be formed? Wasn't it Kathleen Wynne, the Premier? Are you saying she's setting up a partisan witch hunt?

Ms. Laura Miller: So, Mr. Bisson, I'm not sure—

Mr. Gilles Bisson: Are you throwing her under the bus?

Ms. Laura Miller: Pardon?

Mr. Gilles Bisson: Are you throwing the Premier under the bus?

Ms. Laura Miller: I believe it was all MPPs who voted on forming this committee and having this discussion.

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Mr. Gilles Bisson: No. Was it not the Premier of Ontario who said, "I want this committee formed, and I want the truth to come out. I want it to be transparent. I want this committee to look into all matters related to the gas plant"? So she set up her own witch hunt, is what you're saying.

Ms. Laura Miller: When this committee was struck, I was not in the province, so I cannot speak to what she or any of the MPPs may have said at the time—the discussion around that in the House, the discussion amongst the House leaders, the discussion amongst the leaders, anything like that. I can't speak to any conversations she would have had after being elected the leader of the Ontario Liberal Party and being sworn in as Premier.

Mr. Gilles Bisson: I think what it speaks to is, the government had been in power for nine years and were used to doing things their own way and not being accountable to anybody. All of a sudden, there's a minority Parliament, and this is somehow seen as a partisan witch hunt because you're not in control. I think it speaks to the contempt that your administration has shown over the last number of years.

Ms. Laura Miller: We're completely accountable.

Mr. Gilles Bisson: Boy, you have a funny way of showing it. You won't release documents, you hit the "delete" button, you think you've covered your getaway, and it turns out in fact there were backup tapes of the backup tapes, and you got caught.

The fact is, you did not release documents when this committee—

Ms. Laura Miller: We produced documents in July, after we had reached a negotiation on Mississauga. We produced documents in September, after we had reached a negotiation with Oakville.

At the end of the day, political staff are told to manage their inbox in a certain way, so that requires that duplicate, personal, transitory, political emails be deleted. I did nothing wrong.

Mr. Gilles Bisson: Was it okay not to release documents that were requested by the estimates committee?

Ms. Laura Miller: I believe that Minister Bentley did what he thought was best, in terms of trying to get the best value for the dollar. You don't show your poker hand when you're in the middle of negotiations.

Mr. Gilles Bisson: Thank you very much.

Le Président (M. Shafiq Qaadri): Merci, monsieur Bisson. J'apprécie votre coopération. Je passe la parole à M. Del Duca.

Mr. Steven Del Duca: Thank you very much, Mr. Chair, and thank you, Ms. Miller, for being with us here today and answering the committee's questions.

I think one of the things that's probably most important when we're looking back and considering what was occurring is the entire concept of context. I want to ask you a little bit about what was happening during the time at which some of the emails that have been discussed here at committee today were sent.

In a statement that you issued last Monday, you said, "I recall this day very well because it was the moment I realized that the PCs were hell-bent on advancing a partisan cause at Chris Bentley's expense."

Can you please provide us with some background on what was happening at this point, in terms of the Speaker's request for all three parties to come to a consensus on the release of the documents?

Ms. Laura Miller: Absolutely. We anticipated, in bringing back the Legislature early, that Mr. Leone, the member for Cambridge, would stand up on a point of privilege because he felt that—

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca and Ms. Miller, with apologies, that line of questioning is also disallowed.

Mr. Steven Del Duca: Just to be clear, so I understand it for my next few questions—

The Chair (Mr. Shafiq Qaadri): If one could be clear, I'd be pleased to be clear—

Mr. Steven Del Duca: I understand that, and I appreciate that. I'm asking about the context of behaviour, generally, in the Legislature at that time, not with respect to the Speaker himself; with respect to the rest of the—

The Chair (Mr. Shafiq Qaadri): At which time? We need the time.

Mr. Steven Del Duca: In the time leading up to the Speaker's ruling.

The Chair (Mr. Shafiq Qaadri): From my understanding, that's irrelevant.

Mr. Steven Del Duca: Okay. Fantastic.

I'm going to try with the next one, and feel free to jump in and let me know if I have crossed this line.

I bring this up because I actually do remember this time period fairly well. This was my first week in the Legislature as a member of Parliament, and frankly, I couldn't believe what I was hearing from the opposition. All of us were hearing insults. We were hearing threats. There was, I think, frankly, an over-the-top amount of vitriol that was being spewed by the opposition in the Legislature. I know that from my perspective, there was no doubt in my mind, as a rookie, brand new MPP, that the members of the PC caucus, in particular, were out to destroy a man's integrity and his career, specifically Chris Bentley's.

A couple of things from Hansard, from that period of time: On September 25, the PC member from Simcoe—

Grey, Mr. Wilson, in my opinion, smeared former Minister Bentley when he said the minister “knows that he could lose his licence to practise law. He knows that he could be expelled from the Law Society of Upper Canada. He knows that he may be called before this House to deliver a humiliating apology....” And the member from Cambridge, Mr. Leone—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca—disallowed.

Mr. Steven Del Duca: You haven’t heard the question yet, though.

Part of this committee’s mandate is to review the PC allegations of contempt against Mr. Bentley, and I know that you alluded to this a second ago when you were talking. Initially, it seemed that the contempt charges would be the primary focus of the committee’s work, for the PCs in particular, and at first, frankly, their witness list was made up of parliamentary procedural experts. In fact, the very first person on their list, whom you alluded to just a moment ago, was the Honourable Peter Milliken, and I don’t think I need to remind everyone what happened; frankly, you did. When Mr. Milliken was asked about some of the matters before us, he said, and I’m quoting him, as you did: “I don’t know why there would be a breach. I don’t understand that.” After that particular occurrence, the Tories suddenly changed their witness list; they updated it, and they haven’t invited a single procedural expert to testify again.

Back to Milliken’s point: Given the fact that the order to produce the documents was complied with, were you surprised that the opposition decided to pursue contempt?

Ms. Laura Miller: Surprised, no. Disappointed, yes. I think they had been telegraphing it for quite some time. I think that it was in their interest to smear the then member for London West, the then Minister of Energy, Chris Bentley, and I think it was their intention to try to bring the government down. I was disappointed. I was disappointed because I think the Speaker, in his ruling—I don’t think the spirit of his ruling was met at all by the House leaders, which was a huge disappointment.

Mr. Milliken spoke about Afghan detainees. It was a bad example that was constantly being used in the lead-up to August and September by legal counsel, as a way that you would want to see MPPs work together to try to review documents without showing the government’s hand in the middle of negotiations, because we’re trying to get the best value for money. If we had cancelled the contract outright, as the PCs and NDP had advocated for, it would have cost hundreds and hundreds of millions of dollars more. We were trying to get the best possible deal for taxpayers, and I think some testimony from the OPA—even the auditor—talked to that specifically.

I was disappointed. I was absolutely disappointed, because I think that, at the end of the day, we followed through. We released the documents. I think that the folks at the OPA—whoever is involved with the negotiations with Oakville—did whatever they could, knowing that their minister, his reputation, his liberty and his

livelihood were at risk. We were able to release those documents.

If the negotiation hadn’t come to fruition by the deadline, I have a feeling that the government would have released the documents, but that would have been all for naught, because I think that, at the end of the day, the PCs and the NDP had decided that this was their opportunity to draw blood. It’s really unfortunate, because Chris Bentley is one of the most honourable people I know.

Mr. Steven Del Duca: Thank you very much for that answer.

I want to talk a little bit about the estimates motion specifically. I know that you’ve alluded to it a couple of times here today, but I think it bears repeating, and I think we should talk about that a little bit. I want to take a few steps back and talk about that motion, the motion moved by Mr. Leone for correspondence from the energy ministry and the OPA related to the power plant relocations.

As you, I think, would know, at the time of the motion, in May 2012, there were fairly complex and serious negotiations that were taking place that were ongoing with both of the companies. In your view, what would it have meant if the OPA and the province’s negotiating position was prejudiced because the company had access to confidential and privileged information?

Ms. Laura Miller: I think that the cost would have been much higher. I think it would have been difficult to negotiate the deal that the OPA and their associates were able to negotiate, and I don’t think that that would have been in the best interests. I think that, at the end of the day, that was what informed Chris Bentley’s decision.

I do recall that, at the time when then-Minister Bentley was testifying or appearing at estimates, I believe the Chair, the member for Beaches–East York, even advised Minister Bentley that he didn’t need to respond or disclose documents if he thought that that would jeopardize the negotiations. I think that most reasonable people would understand why you wouldn’t want to show your hand. I have not spoken to one person who understands why it would be a good idea to reveal those documents and put them out for everyone to see before the negotiations were completed.

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Mr. Steven Del Duca: Not surprisingly, we’ve had somewhere in the neighbourhood of 40 witnesses come before this committee, and a number have been asked questions along the same lines. Not surprisingly, many have given us testimony that’s actually fairly consistent.

For example, the former secretary of cabinet, Shelly Jamieson, said, when she was here, “It would have harmed the negotiations for sure. Nobody likes to ... have all their paper about what they’re talking about before the conclusion of the deal. It’s just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves.”

The Auditor General also said, before this committee, that it's like in poker, as you said a second ago: "You don't show the people around the table your cards."

Interestingly, we often hear the members from the PC caucus talking about how they want to stand up for taxpayers, yet they wanted to make public the information that would have potentially hurt negotiations and thus directly hurt the taxpayers. Again, it seems to me that they're more interested in scoring cheap political points than actually working for the public good. What do you feel about that?

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, feel free to elevate your language, if you might.

Mr. Steven Del Duca: I will aspire to do so. Thank you.

Ms. Laura Miller: When the Auditor General appeared, he said something that struck me as really interesting. Basically, he said that because of the situation as it pertained to Mississauga, the proponent, the group, Greenfield South, who was contracted to build that plant was in a stronger negotiating position because of the public scrutiny.

We were in a situation where the commitment was made to relocate the gas plant, and then coming out of that election, for some reason, the PCs continued to draw attention to the fact that the work at the gas plant was still under way. I think that the folks at the gas plant were accelerating their work there because they were trying to squeeze more out of the government.

At the end of the day, what the auditor said, I think, is really revealing and damaging to the PCs. Basically, he said that the PCs and the public scrutiny and the pressure around the time, particularly after the election, put the proponent in a stronger position, and I think that's quite unfortunate.

If we're all concerned about what's best for the taxpayer dollar, I don't understand why the PCs and the NDP were going to cancel the contracts—outright cancellation was going to cost hundreds of millions of dollars—and I don't understand why they thought it was a good idea to disclose our negotiating position before the negotiations were up. It boggles my mind.

Mr. Steven Del Duca: Thanks very much. I want to ask you a couple of questions about the Mississauga relocation.

The committee, I think you would know by now, has heard from a number of witnesses who confirm that all three of the parties had made the commitment to cancel the Mississauga plant.

I think we're all familiar now with Mr. Hudak's famous press conference in the middle of the 2011 election, when he said that the plant would be "done, done, done" if he was elected as Premier. Of course, there were the PC flyers that were sent out across Mississauga and Etobicoke during that last election announcing that "the only party that will stop the Sherway power plant is the Ontario PC Party." I actually have copies here if folks need to see those.

I'm sure that you're also aware of the commitments made by local NDP candidates during the election campaign and their opposition to the plant.

Mayor McCallion, when she was here before the committee, told us, "The impression that was certainly given beyond a doubt ... I think all parties would have cancelled it...."

Given all of that, what do you make of the opposition parties trying to, essentially, rewrite history? They stand up every day, here at this committee and elsewhere, pointing fingers at our government for following through on the very same commitments that they made to the people of Mississauga. How do you feel about that?

Ms. Laura Miller: Again, disappointed, but not surprised. The opposition have a role to play. I think that, in particular, the opposition has relished the dynamics of a minority Parliament. I think that they are going beyond trying to hold the government to account. I think at the end of the day, all three parties listen to the communities' concerns. I don't know why it is that the PCs and the NDP feel that that's no longer relevant, because I think it's quite relevant.

You would have heard before from the former Premier, from the former Minister of Energy, maybe even the OPA, that of the 17 gas plants that were sited, two of them we got terribly wrong. As Premier McGuinty says, there's never a wrong time to make the right decision.

It's unfortunate that the decision came so late. That being said, in 2011—I mentioned this before—I was at the Ontario Liberal Party office. I was on an unpaid leave from my role here in government, and I do recall in June, before the election, the Premier kind of telegraphing and saying that there were concerns with Mississauga because for a very long time, it seemed dormant. It didn't seem like it was going to happen. I think that Mayor McCallion and some of the community groups testified to that as well. I think that the proponent saw an opportunity and decided to move forward.

Mr. Steven Del Duca: There have actually been a number of unanswered questions that have come around the work of the committee regarding the opposition commitments to cancel the Mississauga power plant. For example, we wanted to know who approved their robocall scripts, their campaign flyers, their campaign announcements—all of that stuff. They very clearly articulated their desire to kill the Mississauga power plant. We wanted to know what their costing was for their campaign commitment. In fact, when Mr. Hudak was before this committee, he was asked 28 times these very questions, but he refused to answer. Given that he refused to answer what I think were fairly straightforward questions, we decided to invite some local PC candidates who were particularly vocal about their opposition to the Mississauga power plant. This committee has now sent 10 invitations to three PC candidates, but despite our repeated interest to have them appear before this committee and answer our straightforward questions, they continually refuse to appear here. Why do

you think that is? Do you think they may have something to hide?

Ms. Laura Miller: That's a shame. I think that if you are invited to appear before the committee, it's important to appear before the committee to assist with the work that's under way. I can only surmise that those candidates do not want to reflect on or remember that campaign. It wasn't a particularly good one for them.

Mr. Steven Del Duca: Okay. I want to move a little bit to the question of costing. With respect to the hundreds of emails that the committee has actually received to date that haven't received a lot of, I guess, attention, as you highlighted in last week's statement—and I quote you again: "These pages confirm that the Ontario Power Authority was the source of the figures released to the public." Can you explain that in a bit more detail for the committee? What was the information provided to the government by the OPA around costing for the two gas plant relocations?

Ms. Laura Miller: I can speak to this. In my former role, being responsible for communications in the Premier's office, I was not involved with the negotiations, the mandate, when it came to the relocation of the gas plants. I would have been notified when the negotiations were complete. When I was notified on Mississauga—I believe that was the first one in July—we were told that it was \$180 million. Those were the figures that we were provided by the OPA and by the Minister of Energy, that it was \$180 million.

We found out later that there was a non-utility generation payment of \$10 million. The media and I think the opposition started to talk about a \$190-million figure. We accepted the \$190-million figure because we were quite unclear on what that was about, but if it had to do with the negotiations to relocate the plant, that made sense to us. I think that the OPA and the Ministry of Energy weren't particularly happy with the \$190 million, but at the end of the day—it was the \$180 million plus the \$10 million—the \$180 million was the number that we received from them. The same with Oakville. Again, we would have been notified that they had come to an agreement, that it was \$40 million in sunk costs, and those would have been the figures that we would have put into press releases, speaking points, different things like that.

I think it's also important for the committee to know, Mr. Del Duca, that there's something in government called fact check. So it's not that I, as a political staffer, am just writing a release and then we press "send" and it goes to everyone. At the end of the day, it is quite a process. So it would be the Ministry of Energy maybe working with the OPA; political staff working with civil servants; it would come to us through Cabinet Office. If we made any revisions, they'd go back through Cabinet Office and back to the civil service. So at the end of the day, it's not that we were pulling these figures out of nowhere. They were the figures that were provided to us by the OPA, by the Ministry of Energy, and everything

that was released by the government did go through Cabinet Office and it was fact-checked.

Mr. Steven Del Duca: Thank you for that. In fact, the testimony that we heard here at committee from Colin Andersen does actually confirm what you're saying in terms of Mississauga. He testified, while here, "We did provide them with the numbers. That is what you would expect." And for Oakville, he told the committee, "But it's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized...." That's his quote.

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Ms. Laura Miller: Right.

Mr. Steven Del Duca: So again, you would agree that when the finalized deals were announced, the information that was costed by the OPA is what was provided to the public.

Ms. Laura Miller: Yes, absolutely.

Mr. Steven Del Duca: Okay. I think you've no doubt heard the PC and NDP critiques, let's call them, about the costs associated with the two relocations. I personally find that a little bit tough to swallow considering that they also, as we've said earlier, committed to cancel both of the plants. And unless I'm missing something, there would have been a cost associated with their commitments had they won the election and formed government. In fact, we've actually heard expert testimony that the PC commitment to outright cancel the plants and not relocate them would have been much more costly. Can you speak to that at all?

Ms. Laura Miller: All that I'm aware of is that if there was an outright cancellation it could have been close to \$1 billion that would have had to be paid out to these companies with no benefit to the taxpayer; nothing would have been built. I think at the end of the day the \$180-million and \$40-million figures spoke to sunk costs, spoke to things that weren't going to be repurposed, that couldn't be reused at the new location, spoke to the fact that money was spent, time was invested, materials were invested that couldn't be repurposed.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Laura Miller: That was my understanding and I think that was most people's understanding coming out of those two announcements.

Mr. Steven Del Duca: With my last few seconds, I want to call attention to a letter that was sent to the Chair on July 26, 2013. I couldn't help but notice in the first round of questioning that you received from the PC caucus there was a lot of discussion—in fact, all of their questioning dealt with this issue of emails and stuff that they had in front of themselves today in committee and they were asking a series of questions. I just wanted to quote from this particular letter, which is from the Deputy Minister of Government Services. In this letter, on page 2, he specifically says, with respect to email searches and document searches, "It is not unusual to have discrepancies between an individual's search of their desktop computer using key words and a system search using"—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Del Duca. Mr. Fedeli, 10 minutes.

Mr. Victor Fedeli: Thank you very much, Chair. In your opening statement, you said the government was prepared to release all the documents. Do we have all the documents now, Ms. Miller?

Ms. Laura Miller: I hope so.

Mr. Victor Fedeli: You also—

Ms. Laura Miller: Mr. Fedeli, your frustration is shared by me and by many others. At the end of the day and through testimony, you would know better than me that the OPA and the Ministry of Energy were preparing these documents in August and then they were released and then, oh my goodness, there's stuff coming in October and the deputy minister and the chair of the OPA: "Mea culpa, mea culpa, everything's out here." And then I read that in February there was a third release.

Mr. Victor Fedeli: It wasn't, "Oh my goodness, here they came." They came later because the documents that were released were only a fraction of the documents requested. The OPA was instructed by insiders at the Ministry of Energy to hold back 6,000 documents, so on the next document dump of 20,000, it wasn't, "Oh my gosh, look what we just found." There was a concerted effort to hide those emails from this committee. That has been under sworn testimony by two witnesses.

The government, you said, produced the documents by the deadline, first in July, then in September. You said that was to make sure we got the documents after the negotiation. Do you think the negotiations are done by now?

Ms. Laura Miller: Pardon? How do you mean?

Mr. Victor Fedeli: You said we got the documents after negotiations in July and then we got another batch after the negotiations in September. They were held back from us so they were not going to interfere with the negotiations. Are those negotiations done?

Ms. Laura Miller: I would think so.

Mr. Victor Fedeli: So why do you think, after the negotiations ended, we received another 54,000, 55,000 documents, up to and including last week, when the negotiations ended about a year ago? Why would we still be getting documents week after week after week after week, including documents that fell under the initial search parameters? Why do you think that is?

Ms. Laura Miller: Well, I can only guess. Having read the former secretary of cabinet and the current secretary of cabinet's testimony, also the Deputy Minister of Energy, even Mr. Andersen from the OPA, I don't think government is equipped or is able to produce documents. I don't know if there is a consistent way that they search for documents ministry to ministry, agency to agency, and I think it's been a real struggle.

I believe that it was a struggle, that everything was produced in good faith—

Mr. Victor Fedeli: Well, hang on a second. On that I have to challenge you: Everything was not produced in good faith. We had to claw and pry your own comment, your own written email to freedom of information: "I

have no responsive emails." That's not producing documents in good faith.

When did you delete your email?

Ms. Laura Miller: How do you mean?

Mr. Victor Fedeli: All at once? As they came? When did you delete your email?

Ms. Laura Miller: Kind of on a regular basis, case by case. So an example would be, related to—

Mr. Victor Fedeli: Gas plant—when did you delete your gas plant emails?

Ms. Laura Miller: I'll give you a specific—the former Premier obviously was preparing to speak in the Legislature on this motion when the debate was shut down, and he held a press conference so he could deliver his remarks because he thought it was important to speak to that.

Mr. Victor Fedeli: When it was shut down—what do you mean by "when it was shut down"?

Ms. Laura Miller: You'll recall that there were a number of, from what I understand, MPPs who still wanted to speak on the motion, and I guess for whatever reason—I'm not the most up to speed on parliamentary procedure, but all of a sudden, I guess, we were going to a vote so no one else could speak anymore. The Premier really wanted to speak, so an example would be his remarks. He would have worked on his remarks. We would have been going back and forth with staff about different facts or "Can we say this?" or "Should we say that?" When that was over, I would have deleted it.

Mr. Victor Fedeli: You would have deleted those, the Premier's remarks that he did or didn't make?

Ms. Laura Miller: Yes. A good example is when we did a trade mission to China in January—

Mr. Victor Fedeli: No, I just want to stick to gas plants.

Ms. Laura Miller: No, but I want you to understand that the way that I would have managed my emails is that once something was completed, I would have deleted it. If something was transitory, I probably would have deleted it immediately. If something was political—

Mr. Victor Fedeli: Would you have deleted any of them in the middle of a request?

Ms. Laura Miller: No.

Mr. Victor Fedeli: Okay. So on October 10, 2012, you get an email from John O'Leary: "I require your assistance to fulfill a freedom-of-information request." On October 24, three weeks later, you write to him and say, "I have completed a search. I have no responsive emails." But in between then, on October 16—that's only days after—is the whole Speaker controversy over gas plants. You have gas plant email that you deleted on October 16, which is after the request came. The request came on October 10. You deleted email on October 16, and on October 24 you said, "I don't have any." You just finished saying, under oath, you wouldn't delete your email in the middle of it, but now you have. You've deleted a vital gas plant scandal document after you were asked to produce them.

Ms. Laura Miller: I'm sorry. What was vital? Which document was vital?

Mr. Victor Fedeli: This is the Levac one. This is the controversy over the gas plant, "manage the gas plant issue." This is a five-page email. You deleted that after you were asked for gas plant documents. You've deleted that one. I'll give you some time to think about your answer.

Ms. Laura Miller: No, no, no.

Mr. Victor Fedeli: Yes, yes, yes.

Ms. Laura Miller: No, I think that's fine, Mr. Fedeli.

I would typically receive 10, 20, 30, 40 emails a day. I think I would tend to respond to either the first or the second request for an FOI search. I think that in terms of that period of time, it was a very busy period of time for us. The Premier had announced the prorogation. He announced his—

Mr. Victor Fedeli: Busy deleting is right.

Ms. Laura Miller: He announced his intention to resign. We were busy trying to deal with the BPS compensation package and trying to figure out what we could do with our public sector partners on that.

Mr. Victor Fedeli: You're stretching credibility here, Ms. Miller. Come on.

Ms. Laura Miller: No, I don't think I am.

Mr. Victor Fedeli: You were asked to turn over, on October 10, all your gas plant documents. On October 16, you and several others had a lively discussion, five pages long, about gas plants. You deleted those and told the people you had no documents to turn over.

Ms. Laura Miller: But I think, if I—

Mr. Victor Fedeli: That is just callous and that is purposeful.

Ms. Laura Miller: No. Mr. Fedeli—

Mr. Victor Fedeli: That is purposeful. You're right in the middle of the request.

Ms. Laura Miller: I don't think that's—

Mr. Victor Fedeli: So let's look at that email, though, the five-page email. You talked in your opening sentence about the fact that the Tories are threatening the integrity of a very honourable man, Mr. Bentley, but let's just read in those five emails something that Chris Morley said: "Suspect Bentley is her source." He's speaking about Karen Howlett from the Globe and Mail. I won't read you what he says about her in front of that because it's foul language, but he suspects Bentley is her source. Is that this honourable man, Chris Bentley, that Chris Morley, your co-worker, is suspecting?

Mr. Steven Del Duca: Chair, are these questions within the scope of the committee?

Mr. Victor Fedeli: I would think so. Do you want to answer that?

Mr. Steven Del Duca: They actually seem well outside the boundary. He's now talking about the former chief of staff's conversation regarding a reporter in the gallery. They're not even close to being within scope, from my perspective.

Mr. Victor Fedeli: So is her source, the source he's talking about, the source of gas plant scandal documents—

Mr. Steven Del Duca: Can I get an answer on this?

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Mr. Victor Fedeli: He's talking about managing the gas plant issue, and he suspects Chris Bentley, the Minister of Energy, is the source to the Globe and Mail. You're telling us that we're threatening his integrity by discussing something that he would not do for the Legislature that he was ordered to do, yet you're going behind his back, talking, having a cute discussion about him being a source to the newspaper?

Ms. Laura Miller: I'm sorry. I said that he was a source?

Mr. Victor Fedeli: It's to you. It's from Chris Morley. I don't see you defending him in the next email. The next email says, no, it's probably "Butts now that I think about it"—

Ms. Laura Miller: Who said that?

Mr. Victor Fedeli: —referring to somebody else.

Ms. Laura Miller: Did I say that?

Mr. Victor Fedeli: This is from Don Guy. I don't see you defending anybody in here. Yet you sit here talking about Chris Bentley.

Ms. Laura Miller: Chris Bentley is a very, very honourable man.

Mr. Victor Fedeli: We should pass that on to Chris Morley and Don Guy, who think that he's the source of a leak to the Globe and Mail.

I wanted to ask you, what did you mean when you said you were putting the Speaker "on notice"?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: I've asked you a question.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, that is apparently not in the scope.

Mr. Victor Fedeli: Did you or Mr. Gene threaten the Speaker?

Mr. Steven Del Duca: Chair.

The Chair (Mr. Shafiq Qaadri): Disallowed.

Mr. Victor Fedeli: What did you mean by "we need better" of him?

The Chair (Mr. Shafiq Qaadri): Disallowed.

Mr. Victor Fedeli: Do you understand the significance of his role?

I asked you a question.

The Chair (Mr. Shafiq Qaadri): Disallowed.

Mr. Victor Fedeli: Do you understand the gravity of the situation: Mr. McGuinty's senior staff attempting to intimidate the Speaker? Do you know how serious an issue this is?

The Chair (Mr. Shafiq Qaadri): Disallowed.

Mr. Victor Fedeli: Well, let me ask a question to the Clerk or to Peter, if you don't mind. What is the appropriate forum to look at pressure on the Speaker, then, if not here today?

Mr. Peter Sibenik: It's a matter that could potentially be raised on a point of privilege in the House, if a

member is so inclined. But it's certainly not within the purview of the current mandate of the committee.

Mr. Victor Fedeli: Is there any qualification for that? We can raise this as a point of privilege in the Legislature?

Mr. Peter Sibenik: If you wish—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Just to continue your point, I think that our legal counsel is directing you appropriately that, should you have concerns with regard to (a) the ruling and (b) its mechanics, that should be raised formally, probably in writing, with the Speaker's office and the table officers of Parliament.

The floor is now with the NDP. Monsieur Tabuns.

Mr. Peter Tabuns: Thank you, Chair. I'm sure that we'll have more extensive discussions about your ruling on whether or not we can actually ask questions of the witness.

I'll take a different tack for the moment. I'm sure others will have an opportunity to ask questions, as well.

Ms. Miller, it's clear you were involved in how best to handle Dalton McGuinty's resignation. You were involved in the discussions the weekend before he made his announcement.

Ms. Laura Miller: Yes.

Mr. Peter Tabuns: Did you discuss the gas plant file with Mr. McGuinty that weekend?

Ms. Laura Miller: No.

Mr. Peter Tabuns: Why didn't you discuss it with him?

Ms. Laura Miller: It wasn't relevant to our discussions. He had called me on Saturday—I don't recall the date, but Saturday, October something—to let me know that he had made a decision to announce his resignation, and any subsequent conversations we had were about the best way to do that. He was insistent that caucus and the public hear it at the exact same time. He wanted to communicate it on his way out. That was his choice. He was the Premier; he had served 10 good years, 22 years as MPP, 16 years as the leader of our party. We all respected that, and so that's what we were working towards on the weekend.

Mr. Peter Tabuns: You're saying that the gas plant controversy, scandal, was not a factor in his decision to go?

Ms. Laura Miller: No.

Mr. Peter Tabuns: Why were staff in the Premier's office, people like Don Guy, so concerned with the story Karen Howlett was preparing to write for the Globe and Mail, which in fact talked about discussions regarding the gas plant leading up to the resignation and prorogation?

Ms. Laura Miller: I can't speak to why other people would be concerned, but I can speak to why I would be concerned.

Mr. Peter Tabuns: Why were you concerned?

Ms. Laura Miller: Because it was categorically false. She said that she had a source, and she was looking for confirmation. It was a very close group of people who knew about this, who were part of those discussions.

There were no other deliberations, no other discussions, about his announcement to resign. I think there was generally concern because, obviously, if someone had told her that, they were feeding her misinformation.

Being a journalist is pretty powerful, in that whatever you report can be taken as fact, whether it is 100% accurate or not, so I think that was the concern. That was the reason why I did call her that evening: to have a conversation with her to let her know that, as someone who was part of the discussions during the entire weekend, I could tell her that, whoever she was talking to, that was not the case.

Mr. Peter Tabuns: So if it wasn't that—

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, I would just advise you that you are kind of grazing the boundary, but go ahead.

Ms. Laura Miller: Grazing?

Mr. Peter Tabuns: Thanks.

Mr. Gilles Bisson: Boy, this stinks.

Mr. Peter Tabuns: Yes. We'll continue to push the boundary as much as we can, Mr. Chair; it's our job. We're supposed to be asking these questions.

So if it wasn't that weekend, in the lead-up to the prorogation, was there no discussion about the gas plants and their impact, and your administration's need to get away from all of this?

Ms. Laura Miller: How do you mean?

Mr. Peter Tabuns: That, in fact, you needed to shut down the inquiry. You needed to shut things down.

Ms. Laura Miller: Well, there was definitely a conversation about prorogation. Prorogation was an option that surfaced more than a few times since the election in terms of it being a tool that was at the Premier's disposal if he chose to use it. I feel that he felt—and he said this publicly—that it was getting very heated around here. It was very venomous, and he thought that a cooling-down period would result in a better outcome, a more fair outcome, and better deliberations for the committee.

Mr. Peter Tabuns: Better deliberations for the gas plant inquiry committee?

Ms. Laura Miller: I just think, in terms of being able to bring the temperature down, that perhaps we would be able to have more—what would be the word? When things get heated, people say things; you don't always get to the root of the issue, and I think that he felt that if the temperature was down, perhaps it would be more productive. I guess that's the best way of putting it.

Mr. Peter Tabuns: There was a very different take from Dave Phillips, who was in the government House leader's office. He sent an email on October 1 to you and to David Livingston talking about prorogation and the fact that the ongoing investigations of Ornge and the gas plant would dominate the months to come. He speculates that the 2013 budget was a time when the government was possibly going to fall, and thus, how were we going to spend our time? He was talking about how the Liberals would be consumed by these scandals. He talked about Yasir Naqvi's work life for the next two and a half months; if we don't prorogue, from mid-October to mid-

November he will have to spend all his days during the weeks as our lead member on the committee looking into the gas plants. Mr. Naqvi apparently drew a different straw, but it seems pretty clear to us that your government wanted to shut this down. You wanted to prorogue, and I think that was the tenor of the questions that were being put to you and the tenor of the assessment made by journalists watching all of this.

Ms. Laura Miller: Right. So, with respect to the email that Dave Phillips sent, I don't believe I responded to that. He was entitled to his opinion on what he thought we should do moving forward.

I think in terms of—I'm sorry; there was a second part, something that you said. I should have written that down.

Mr. Peter Tabuns: That it seemed pretty clear from outside observers that you were looking for a way to shut down this inquiry—

Ms. Laura Miller: Right.

Mr. Peter Tabuns: —that you wanted to prorogue the House because there were very substantive questions—that still have to be asked, Mr. Chair—that you wanted to shut down for a number of months.

Ms. Laura Miller: Well, Mr. Tabuns, I think as well that in the batch of emails that were released from me, at some point I did write that the only way to shut this down and to stop this line of inquiry was to have an election. I think we all know that prorogation was not going to stop this from bubbling back up, was not going to stop the motion from coming back forward and was not going to stop the committee from this work, but it was going to allow for the temperature to cool quite a bit.

Mr. Peter Tabuns: May I say, Ms. Miller, that that was recognized in Mr. Phillips's email. It was pretty clear that it wouldn't be the end of it; it would just give you a respite in the expectation that there wasn't a lot of time left before the next election. Did you want to spend all of it in committee? His argument was no.

In a different direction, why was it that Chris Bentley and Mr. Butts, the former principal secretary, were suspected of being the sources for the Globe and Mail on all of this?

1030

Ms. Laura Miller: I'm not sure. I think you'd have to ask the folks who put that in writing.

Mr. Peter Tabuns: I'm looking forward to that opportunity.

You have no insights for us, then, as to why they would be seen in a bad light by the senior leadership in the Premier's office?

Ms. Laura Miller: No. For all I know, Mr. Guy and Mr. Morley were being sarcastic or were joking or anything like that. You'd have to ask them what their mindset was or what their intention was with those comments.

Mr. Peter Tabuns: When did the Premier's office first start talking about proroguing? When were you first involved in those discussions?

Ms. Laura Miller: The first conversation I had about prorogation was with Robert Benzie, who brought it to

my attention that a lot of people were saying we were going to prorogue. This was sometime in the spring.

Mr. Gilles Bisson: So it's Benzie's fault?

Ms. Laura Miller: It's Benzie.

Mr. Peter Tabuns: It's the Toronto Star?

Ms. Laura Miller: The Toronto Star.

Mr. Gilles Bisson: Why do you guys always blame the media—

Ms. Laura Miller: So that was the first time, because it hadn't been raised before. His advice at the time was not to do it, which obviously was advice well taken. I think, in terms of when we started to talk about it in and around the motion, it was probably—it was definitely after we released the documents and the PCs indicated that they were still going to pursue this motion against Chris Bentley. I have to underscore that I don't think it was right then, and I still don't think it's right today, that they would threaten his livelihood, his integrity, even his liberty—

Mr. Peter Tabuns: That actually isn't relevant to my line of questioning, but your comment there was interesting. So you started looking seriously at prorogation once the gas plant documents were put out in public. That really is the association. Once we, the public and the oppositions, started to get a chance to actually look at what was going on, that's when it kicked into high gear to shut things down so that the hearing could be postponed.

Ms. Laura Miller: But you still had an opportunity to review the documents. You still made hay of those documents in the fall, and you continued to work those documents and additional documents that have come out. So I don't actually think that having a cooling-down period was the worst thing.

Mr. Peter Tabuns: Well, in fact, I would say that it's very consistent with what Mr. Phillips was arguing: that you wanted to shut down this committee so you folks wouldn't be caught in committee.

As you're well aware, when the committee's sitting—

Ms. Laura Miller: But, Mr. Tabuns—

Mr. Peter Tabuns: No, just one second. When this committee is sitting, we have the documents—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the government side: Monsieur Del Duca.

Mr. Steven Del Duca: I'm just going to begin by finishing off the quote that—the last round, the clock ran out on me, so I just want to finish the quote from the Deputy Minister of Government Services referencing what occurs with respect to searches. He wrote in his letter, "It is not unusual to have discrepancies between an individual's search of their desktop computer using keywords and a systemic search using an electronic discovery search tool. The electronic discovery process could include a number of folders that users may not be aware of."

I think that's actually quite important context, given the line of questioning that you've received here at committee today, particularly from the PC caucus, and also as

it relates to a number of the not so much questions you received today, but some of the commentary and editorializing on the part of the member from Nipissing.

I think it's important to note that over 130,000 documents have now been released to this committee; that from day one, Premier Wynne and our government have done everything to respond to the various motions that have come forward from this committee; and that we continue to provide documents as they are requested. I think that's extremely important instead of some of the fiction that's being propagated by folks across the way.

With respect to email retention, I want to ask you a few questions about record-keeping. There's actually been a lot of discussion recently, obviously, here at committee and elsewhere, about the requirements of members of government and their staff with respect to retaining and archiving records. The opposition has been particularly critical of our government's email retention record, and yet it seems to me that while some of them talk the talk, I'm not sure that they actually walk the walk.

So, for example, the recent FOI to the town of North Bay confirmed that no emails were archived from MPP Vic Fedeli's time in municipal government as mayor from 2003 to 2010. In fact, the deputy city clerk clarified the emails—

Mr. Victor Fedeli: Point of order, Chair. I don't think there were any gas plant scandal emails in there, and I can't control what the city of North Bay does with my email after I retire from my office as mayor.

The Chair (Mr. Shafiq Qaadri): It's not a point of order, but thank you for that information.

Mr. Steven Del Duca: In particular, the deputy city clerk of North Bay clarified that emails in that particular municipality that Mr. Fedeli used to run as mayor are only kept for a 30-day period as a standard practice.

Mr. Victor Fedeli: Point of order.

Mr. Steven Del Duca: So would you have to agree that the opposition seems—

Mr. Victor Fedeli: Mr. Chair, thank you very much for acknowledging—thank you very much for giving me the floor. I can't control—

Interjections.

Mr. Victor Fedeli: Thank you very much. I can't control what the city of North Bay does with my email once I leave the office of mayor. I kept my email while I was employed there.

Mr. Steven Del Duca: So you would have to agree that the opposition, particularly Mr. Fedeli, seems to only care about email retention, scoring cheap political points etc., when it does apply to us? Would you agree with that?

Mr. Victor Fedeli: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair, for recognizing me. May I also add again that none of those emails had to do with the gas plant scandal brought on by the Liberal Party?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, that's not a point of order, but thank you.

Mr. Steven Del Duca: So you'd have to agree that Mr. Fedeli in particular, but that entire caucus, generally speaking, doesn't really seem to actually want to walk the walk when it comes to government record-keeping.

Interjections.

Mr. Steven Del Duca: Well, 30 days. They were only kept for 30 days under his leadership. Lots of hypocrisy coming from that member.

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, for a cascade of reasons, that line of questioning is likely irrelevant, so I would invite you to please rephrase and continue.

Mr. Steven Del Duca: Would you agree that the opposition seems to only care about email retention when it doesn't apply to them?

Ms. Laura Miller: I think that for governments of all stripes and at all levels, whether it's municipal, provincial or federal, there are some real challenges with record-keeping. With the advent of email, BlackBerrys, all of our communication really happening online, all governments need to take a look at how documents and emails are managed. I think there was a presentation here that basically said that we feel that sunshine is the best disinfectant, and we need to have transparency and accountability and openness so that all emails—it doesn't matter if you're in the Liberal caucus, the PC caucus, the NDP caucus or in the government—should be opened up. I think that's an interesting idea.

I just think what's important is that whatever decision is made, whatever the rules are, they be made clear to the staff. Having left the Premier's office now twice, I can tell you that I was given no instruction when it came to documentation, when it came to emails. I treated my departure in February 2013 the same way I treated my departure in July 2010.

Mr. Steven Del Duca: Thank you. When did you start working at Queen's Park?

Ms. Laura Miller: I started working in Queen's Park in May 2002. I started as an intern in opposition.

Mr. Steven Del Duca: May 2002.

Ms. Laura Miller: Yes.

Mr. Steven Del Duca: Okay. You may or may not be aware of this: I actually spent some time working here at Queen's Park a number of years ago as a staff person to a couple of members of provincial Parliament. I certainly have recollections, from my time working here as an opposition MPP's staff member, with respect to a number of fairly important and fateful decisions made by a previous government, the PC governments of both Mike Harris and Ernie Eves, on issues that came up from time to time, really serious issues, challenges and scandals that came up relating to issues like what took place at Walkerton, what took place at Ipperwash, the sale of Highway 407—and there's a long list there.

I don't know, because of when you arrived at Queen's Park, whether or not you have any particular recollections during the transition period—because you just said you arrived here when the Liberals were still in opposition, before the election was won in 2003. Do you

have any recollections at all with respect to document retention, what was taking place on some of those issues as a PC government was outgoing and a Liberal government was coming in?

Ms. Laura Miller: At the time, I was in the Liberal caucus, and I continued on in the Liberal caucus, so I wasn't part of any of the transition discussions or conversations that took place. But I can tell you that my office was on the first floor of Whitney. It faced Wellesley, so I guess I was facing north. I do recall, after that election, after we won that election, coming into the office, and every day for about a week and a half there was a large shredding vehicle parked outside on Wellesley with documentation that was accompanied by Cabinet Office. I can only guess that this was the outgoing administration's documentation that was being shredded. I imagine that's how they managed their documents.

Mr. Steven Del Duca: I think I'm going to wrap up with respect to talking about what has been taking place in the energy sector, generally speaking, over the last decade or so, and specifically about your experience from the time at which the Liberal government came back to office in 2003.

I think as everyone here knows, our government inherited an energy crisis from the outgoing PCs back in 2002-03. At that time, there frankly wasn't enough generation to power the province on a day-to-day basis. No one knew if the lights were going to stay on. People and businesses of our province were facing rolling brown-outs. There were blackouts. Energy infrastructure was in desperate need of investment, and dirty coal, frankly, was burning right across the province, with serious health implications for the people of Ontario.

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Since 2003, our government has successfully built a clean, modern and reliable electricity system. I think that's part of the story that has actually been missing from a lot of the work taking place here at the committee. I'd like to make sure that we keep this committee's work in context as we go forward, trying to improve the way in which we site energy infrastructure in particular.

From your experience, what are the major differences in Ontario's energy sector from 2003 to the present day?

Ms. Laura Miller: I don't think it's a secret that under the McGuinty government, we renewed 80% of the system: new generation, new transmission, new green energy—a very focused effort on that—nuclear refurbishment, a big push on conservation, smart meters. So I would say it's night and day. When you're renewing 80% of the system—I understand it was a \$96-billion price tag. Of the 17 gas plants that were sited, two of them we got wrong, in Mississauga and Oakville. I think it's really important—and I know that the former Premier spoke to this—that recommendations are made to the Ministry of Energy and to the OPA in terms of how they site plants moving forward and community involvement.

I will say, as someone who is an asthmatic, that I've noticed a huge difference in air quality since we shut down the coal plants, and we continue to do that. What

we did in terms of environment, the greenbelt, I think, makes a huge difference. At the end of the day, do my parents notice those things? They know the lights come on, but they don't really—

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Laura Miller:—pay much attention to how we got to that. But I know it was a lot of hard work, and it was the vision and leadership of Premier McGuinty that this was something that we need to do, and it didn't matter that it wasn't sexy and that people didn't understand it. It was a real need, because for years and years and years, the previous governments just chose to ignore it. So I'm pretty proud of our record when it comes to what we've done on energy, for sure.

Mr. Steven Del Duca: I'm done with questions. I'm not sure if there's anything else you want to add to your testimony here today.

Ms. Laura Miller: No. I really appreciate the opportunity to come here, and I thank you all for your time. I know it's the Tuesday after a long weekend. For the record, I wanted to answer questions, and I tried to.

Mr. Steven Del Duca: Thanks very much, Mr. Chair. Thank you.

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Thanks, Ms. Miller, for your presence. Thank you, Mr. Bisson, for your veiled praise. The Chair appreciates it.

We will, if required, take a few minutes' break.

Mr. Peter Tabuns: Yes, for sure.

The Chair (Mr. Shafiq Qaadri): Please, five, 10 minutes, max.

The committee recessed from 1042 to 1104.

MR. CHUCK ROTHMAN

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Mr. Rothman, I invite you to please come forward and be seated. I invite you to be sworn in by the Clerk.

The Clerk pro tem (Mr. Katch Koch): Mr. Rothman, do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Chuck Rothman: Yes, I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rothman. You have five minutes opening—

Mr. Steven Del Duca: Mr. Chair, a point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca. Yes?

Mr. Steven Del Duca: I couldn't help but overhear out in the hallway earlier, just as various folks were out there scrumming: Resulting from the testimony given by Ms. Miller earlier today, there were a lot of comments made regarding the ruling with respect to what was taking place around the Speaker—a lot of suggestions that, somehow, the decision of the Chair was a partisan one. I just wanted to clarify—

The Chair (Mr. Shafiq Qaadri): Right. Likely not a point of order, but I'd invite you to bring that up later.

Mr. Steven Del Duca: I just wanted to clarify for the record that that wasn't a partisan decision on the part of the Chair. That is correct, right?

The Chair (Mr. Shafiq Qaadri): That is correct; it's also not a point of order.

Mr. Rothman, you now have five minutes.

Mr. Chuck Rothman: Thank you.

The Chair (Mr. Shafiq Qaadri): Please, go ahead. The floor is yours.

Mr. Chuck Rothman: My name is Chuck Rothman. I am a professional engineer. I've been licensed in the province of Ontario for 26 years. For the past 15 years, my focus has been on computer forensics and electronic discovery.

Electronic discovery is the process of identifying, preserving, collecting, reviewing and producing relevant information that originates from digital storage devices such as computers. My role in electronic discovery is from the technical aspect; I'm not a lawyer, I don't make legal decisions, but I advise lawyers and their clients on the technical aspects of digital information.

I have authored a book on electronic discovery. I have written numerous papers and articles. I have spoken at many conferences and I have taught electronic discovery and computer forensics to lawyers and law clerks. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rothman. Beginning with the NDP, Mr. Tabuns.

Mr. Peter Tabuns: First of all, Mr. Rothman, thank you very much for coming in today. We all appreciate it.

You met with people from the Ministry of Government Services, MGS, in the course of Ms. Cavoukian's inquiry into the destruction of emails. Is that correct?

Mr. Chuck Rothman: No, it is not.

Mr. Peter Tabuns: Okay. Can you tell me if you had any interaction with MGS, the Ministry of Government Services?

Mr. Chuck Rothman: In association with the privacy commissioner?

Mr. Peter Tabuns: Correct.

Mr. Chuck Rothman: Not directly.

Mr. Peter Tabuns: Can you tell me how you were informed of their practices and how you assessed their practices?

Mr. Chuck Rothman: I was provided with a report that was given to the privacy commissioner from the Ministry of Government Services describing their email system, their backup policies. I believe the report was in response to the privacy commissioner's questions about the email system and backup, and whether emails could be recovered. I reviewed the report and discussed it with the privacy commissioner, and provided the privacy commissioner with some additional questions to ask. I was then subsequently provided with the answers to those questions, and I assisted the privacy commissioner in writing a section of her report.

Mr. Peter Tabuns: Okay. In her July 23 letter to the deputy minister of the Ministry of Government Services, Ms. Cavoukian states that she is "disappointed with the number of inconsistencies," with the Ministry of Government Services' "overall failure to take full responsibility" for the information provided to her office.

What's your take on the Ministry of Government Services' response to Ms. Cavoukian when she pointed out that she had not been served with the attentiveness that she should have been, given her investigation?

Mr. Chuck Rothman: Well, my only knowledge of anything subsequent to the report is an article that appeared in the Globe and Mail. I didn't have any discussion, subsequent to the privacy commissioner issuing the report, with the privacy commission. From what I could gather in the Globe and Mail, subsequent to the report, the Ministry of Government Services did find some information.

Mr. Peter Tabuns: I'll go back to an earlier point in your involvement in all of this. Were you surprised when you were told that emails had been deleted in very large quantities?

Mr. Chuck Rothman: Surprised? No. I mean, I didn't have an opinion one way or another.

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Mr. Peter Tabuns: Okay. From a technological perspective, is it easy to delete emails, to erase them from the records?

Mr. Chuck Rothman: It all depends on how the system is configured. From the information that I was provided by the Ministry of Government Services, it appeared that the way their systems were configured, once an email was deleted, it was unlikely that it could be recovered.

Mr. Peter Tabuns: Did they make you, or, through their written statements to Ms. Cavoukian, make her aware that they had Symantec systems that had this apparent vault or secondary memory system?

Mr. Chuck Rothman: No, I wasn't aware. That was one of the questions that I had asked after I read their report—whether they had an archiving system—and I was told that the response to that was no, they don't.

Mr. Peter Tabuns: You were told that by the Information and Privacy Commissioner?

Mr. Chuck Rothman: Yes.

Mr. Peter Tabuns: Based on your experience with other companies, with other organizations, is it normal practice for organizations to simply delete emails and erase accounts of former staff?

Mr. Chuck Rothman: It varies all across the board. A lot of it depends on their records management and how well the records management is actually implemented and enforced. Then a lot of what I see is just up to personal practices. I've seen instances where people keep every single email they receive, including all the spam and ads and everything, and I've seen instances where mailboxes are relatively empty.

Mr. Peter Tabuns: According to Ms. Cavoukian's letter to the Ministry of Government Services, she was

told explicitly that no backup tapes for emails existed. When you met with her and you provided supplementary questions, did you ask the Ministry of Government Services whether any backup tapes existed? What were you told?

Mr. Chuck Rothman: Yes, I did. The Ministry of Government Services report indicated that they back up daily and after 24 hours they overwrite the tapes. Then they also have month-end backups, and at the end of the year they overwrite those tapes.

Based on my experience, I know that additional backups are sometimes created for various special things. So one of the questions I asked was, has anybody checked to see whether there are backup tapes that exist from that period of time, rather than just assuming based on the practice? The answer that I received from the privacy commissioner was, “No additional tapes exist.”

Mr. Peter Tabuns: If you had known that the Ministry of Government Services had relied on Symantec software, you would have known, then, that they had this secondary backup system?

Mr. Chuck Rothman: Yes. The Symantec archiving system makes a copy of the—essentially, it moves the email from the email server into a separate area. If I had known that that existed, I would have had a number of additional questions to ask. Just that knowledge alone wouldn’t tell me whether emails existed, but it would lead to additional questions.

Mr. Peter Tabuns: According to the Ministry of Government Services, to now retrieve the backup tapes that they discovered, they’d have to hire an outside third-party vendor at a cost of up to \$3.5 million. Does that seem reasonable to you?

Mr. Chuck Rothman: Without having more details on the types of tapes and their backup software and various technical details like that, I couldn’t comment on the cost. Generally, it’s doubtful that the Ministry of Government Services would have the facilities to restore those tapes themselves. Especially in terms of efficiency and cost, it would probably be more efficient and more cost-effective to have a third-party vendor that specializes in backup tape recovery do that work.

Mr. Peter Tabuns: Okay. Based on your experience with the Ministry of Government Services so far, what advice would you give government officials on how they can improve the retention of important emails in the future?

Mr. Chuck Rothman: The fact that an archiving system does exist tells me that they have the tools in place. It’s just a matter of either configuring them so that they automatically archive emails that need to be retained, or else it’s up to individuals to follow whatever the practices are to retain emails.

Mr. Peter Tabuns: If we wanted to find out, could we determine when emails were actually deleted by someone?

Mr. Chuck Rothman: It may be possible. It’s a complicated process. Generally, the way that I go about doing that is to look at backups. If emails are backed up onto

tape but they’re deleted from the mailbox, then I can see at what point the emails are no longer being backed up onto the tape, and so I know when it was no longer in the mailbox. Apart from that, there may be a way to determine it through email logs. The email server that the Ministry of Government Services uses creates logs of activity, but those logs generally are not kept for more than a few days or maybe a few weeks at most, just because they take up a lot of room and there’s limited storage space.

Mr. Peter Tabuns: Does the fact that an Enterprise Vault or this secondary storage system actually captures emails—does it capture emails that are captured on a daily basis?

Mr. Chuck Rothman: It all depends on—well, it doesn’t capture deleted emails. But what it does is, if an email is—it can be configured in different ways. It can be configured so that every email that is received or sent is automatically copied to the archive and it’s completely out of the user’s control, or it can be configured so that after a certain period of time, a certain number of days that an email resides within the mailbox, it automatically gets moved to the archive system. So it really depends. For the second process, the email needs to still exist within the mailbox on that day that it’s scheduled to be moved. If it’s deleted prior to that, it would never be moved into the archive system.

Mr. Peter Tabuns: Just so I’m clear, there are various ways to configure this secondary storage or secondary filing system, and one is that every email that comes in is automatically stored in this secondary storage; another would be to say, “Every 30 days, we store everything that’s still active, live, in the email system.” I imagine there are other variations on that.

Mr. Chuck Rothman: Yes.

Mr. Peter Tabuns: Okay. Can you just describe for me again how this secondary storage works? Is it a whole separate computer system? Would it be backed up on this server system in Guelph? Would there be another storage location?

Mr. Chuck Rothman: It could be any of those, and I don’t have the details on how it’s configured.

Mr. Peter Tabuns: So it could be stored on the computer itself, on the hard drive of the computer that someone is operating.

Mr. Chuck Rothman: No. Oh, no. It’s a server. It would be stored—and generally, it’s a separate physical storage, but it doesn’t have to be a separate storage device. It could be the same storage device that the email mailboxes are stored on, but it is a separately contained system from the email storage.

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I don’t know whether it’s stored at the facility in Guelph or whether it’s stored at some other facility, and I don’t even know if it’s on the same storage device or a separate storage device, but it’s not on individual workstations; it’s a centralized server system.

Mr. Peter Tabuns: And this backup or secondary filing system or storage system, does it have limited capacity?

Mr. Chuck Rothman: I'm sure it does. Every storage system has limited capacity.

Mr. Peter Tabuns: Is it more limited than the main storage system?

Mr. Chuck Rothman: I don't have that information.

Mr. Peter Tabuns: So it would be dependent on the configuration and the decisions of those who are running the system as a whole.

Mr. Chuck Rothman: Correct.

Mr. Peter Tabuns: Okay. I don't have further questions at this point.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

Mr. Bob Delaney: Good morning, Mr. Rothman. Thank you for coming in. I have a couple of questions just to clarify some of the things you've already said to Mr. Tabuns.

You reviewed the information and evidence provided by MGS IT staff.

Mr. Chuck Rothman: Yes, the information provided to the privacy commissioner.

Mr. Bob Delaney: Okay, but that was all the information you reviewed. Was that information provided by Ministry of Government Services staff to the Information and Privacy Commissioner?

Mr. Chuck Rothman: Correct.

Mr. Bob Delaney: And you told Mr. Tabuns that you didn't meet directly with MGS staff.

Mr. Chuck Rothman: That's correct.

Mr. Bob Delaney: So just for clarification: Your role was more to look at the information provided by the Ministry of Government Services and presumably to help some of the staff within the Office of the Information and Privacy Commissioner understand it? Could you finish that thought for me? What was it that you were doing with the Information and Privacy Commissioner's office?

Mr. Chuck Rothman: That's correct. I was helping them to understand the technical side of the information that they were given. It was essentially all technical information. Just to elaborate on some of the technical terms that were used in the report and explain it to them—

Mr. Bob Delaney: Such as?

Mr. Chuck Rothman: Well, they talked about things like the rotation period for backup tapes. The report discussed whether it would be possible to recover the deleted emails directly from the storage system hard drives. I discussed the process with them. The report basically said, in that aspect, that theoretically it would be possible, but it would be extremely expensive and the likelihood of finding anything would be very low. I agreed with that assessment and explained to the Information and Privacy Commission people why that's so.

Also, in reviewing the information, I had some additional questions. There were things that I thought they

could elaborate on, and so I provided questions that I understand they provided back to the Ministry of Government Services.

Mr. Bob Delaney: You didn't go on-site at the Ministry of Government Services?

Mr. Chuck Rothman: No.

Mr. Bob Delaney: Or any other ministry?

Mr. Chuck Rothman: No.

Mr. Bob Delaney: You didn't conduct a personal physical review? You didn't put your hands on anyone's keyboard?

Mr. Chuck Rothman: No.

Mr. Bob Delaney: And in your career, you've not worked in the Ontario public service?

Mr. Chuck Rothman: In my career?

Mr. Bob Delaney: Yes. Have you worked in the Ontario—

Mr. Chuck Rothman: Prior to working with the Information and Privacy Commissioner, no.

Mr. Bob Delaney: Okay. Did you get any sort of briefing regarding the Ontario public service email and network systems as a whole?

Mr. Chuck Rothman: Just from the report that I was provided with.

Mr. Bob Delaney: Are you aware of either how or when backup tapes are used?

Mr. Chuck Rothman: According to the report, what it said was, information is backed up daily, and after 24 hours those tapes are overwritten and reused.

Mr. Bob Delaney: When we speak about tapes, what medium are we talking about here? I know you can say "tape," but make it a little bit more technical and specific.

Mr. Chuck Rothman: "Backup tapes" is technical. I can't tell you specifically what kind of backup tapes or what kind of backup software they used, because that information wasn't provided. Backup tapes are essentially larger versions of cassette tapes. You store digital information onto them. A single instance of a backup—one day's backup—would encompass many backup tapes.

Mr. Bob Delaney: What would be the capacity of a backup tape—gigabytes? Terabytes?

Mr. Chuck Rothman: Likely gigabytes. It depends. I don't have details on specifically what kind of tapes they used.

Mr. Bob Delaney: A few questions about your firm in general, the work that you use—I'm just trying to put some of it into context. When I read about your firm, I thought your firm was pretty unique. It provides a set of very specialized skills related to electronic discovery and information technology. I assume that one of the reasons that a firm like yours exists is because this is an area that's, quite frankly, very complex and, for an individual, very difficult to navigate if you don't deal with that type of minutia all the time. Does that encapsulate things?

Mr. Chuck Rothman: Yes.

Mr. Bob Delaney: Okay. So it wouldn't be unusual, then, for individuals and, in fact, even senior decision-makers who may not have your day-to-day, hands-on familiarity and the expertise of the resources in your firm

to perhaps make mistakes when it comes to properly executing an electronic-discovery type of search.

Mr. Chuck Rothman: I don't know about whether it would be usual or unusual, but I have seen instances where mistakes have been made.

Mr. Bob Delaney: Would it be reasonable to expect that a user, even a fairly sophisticated user, would have ever heard of the term "Enterprise Vault"?

Mr. Chuck Rothman: I don't know.

Mr. Bob Delaney: Is that a term that's unique to Symantec? Would, for example, a different software vendor have a different term for such a procedure?

Mr. Chuck Rothman: Yes.

Mr. Bob Delaney: What would some of the other terminology be?

Mr. Chuck Rothman: "Archiving system" is the generic term. "Enterprise Vault" is what Symantec's archiving system is called. There's another company called EMC—that's a good question. What is theirs called? They changed the name a few years ago.

There are a number of different software vendors who make archiving systems, and Symantec's archiving system is called Enterprise Vault.

Mr. Bob Delaney: From the vantage point of the vendor, and also from the vantage point of the user, at the time that they reach an agreement to use the service, what is the expectation of the user that the system would be used for, and what scope would the vendor offer, bearing in mind that quite often the users don't use the full spectrum of functionality within a particular piece of software or a system? What would a user of such a system anticipate, and what would the vendor offer, assuming it's a superset of what any one client asks?

Mr. Chuck Rothman: I'm not sure I understand your question.

Mr. Bob Delaney: Okay. From the vantage point of a client who licenses Symantec's Enterprise Vault, if you take on that service, it's kind of like an insurance policy. From the perspective of the client, what are you insuring yourself against?

Mr. Chuck Rothman: I'm not sure that it's necessarily an insurance policy. There are a number of reasons why an organization would put in an archiving system. The main reason that I see a lot is just to make the information storage systems more efficient. Essentially, by using an archiving system, you can move information from the primary storage system that's accessed by everybody every day to a secondary storage system that's not accessed as often, so it doesn't have to be as robust. So it's just an efficiency issue.

Another reason why archiving systems are used—and this is something that is becoming more and more prevalent—is for retention purposes. In that respect, different archiving systems are configurable differently or they have different features that assist in implementing information retention.

Mr. Bob Delaney: So from what you're describing, then, the existence and functionality of the secondary archiving system should be transparent to the user. The

user should know whether the information resides on this one or that one.

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Mr. Chuck Rothman: Generally, yes. I know with the Symantec system, when an email has been archived, it still appears within the user's mailbox, but depending on the email system, whether it's Microsoft Outlook or whatever, it may have a different icon beside it and retrieving that email may take longer because it has to pull it from a secondary storage system rather than the primary storage system. And, depending on how the archiving system is configured, the user may not be able to delete it.

Mr. Bob Delaney: If something is stored on a tape, which means that it's physically removed from the system, does it stand to reason that, depending on the case, either the user may not be aware that the archived deleted email exists, or if it does, may not be able to affect whether it can be accessed, deleted or amended?

Mr. Chuck Rothman: I'm a bit confused. If it's stored on tape, you're right, it's completely removed from the system, and generally users do not directly interact with backup tapes. That's handled by IT staff. Users may be aware that there are backup tapes, especially if they accidentally delete something and they need to recover it. That's generally, from the information that I got from MGS, why they create the backup, so they can restore things if they have to.

But the information that's stored on the archive is separate from information that's stored on backup tapes.

Mr. Bob Delaney: Okay. So the mechanics of the archives, the backups, the tapes, the systems and the servers—any of us who understand some of the mechanics of that would have trouble explaining it to people who aren't in the computer business, but for the average person to understand, wouldn't that be a bit of a stretch?

Mr. Chuck Rothman: Yes, it is a technical process.

Mr. Bob Delaney: Okay. I want to talk a little bit about the cost of doing the kind of work that you've been describing. In the background information that we were provided you've written and spoken about reducing the costs associated with e-discovery. Is that because you've recognized that, as a result of your experience, accessing archived records can be very costly?

Mr. Chuck Rothman: Generally, accessing archived records is probably easier just because most of the archiving systems, including the Symantec systems, are designed with some sort of interface that lets you search through the archived storage system.

The email system that MGS now uses, Microsoft Exchange 2010, also has that facility to be able to search, but in prior email server systems, it was more complicated to search the actual email server and it was easier to search the archiving system.

Mr. Bob Delaney: When we talk about search, and particularly if emails have been archived, would you have to create a virtual machine? Would you have to create a mirror site? Can the records themselves be accessed? Walk me through that briefly.

Mr. Chuck Rothman: To search the archiving system? You would basically log into the archiving system. You would be provided with a screen and you could enter search terms and specify a range if you only want to search specific mailboxes, and then it would search through all the emails that have been archived and give you a list of all the emails that have those search terms in them.

Mr. Bob Delaney: Okay. So in other words, it would find anything and everything in which, in the search string, the search terms existed and, obviously, wouldn't place a value judgment on whether it was important or significant; it would simply yield the existence or non-existence of the search terms.

Mr. Chuck Rothman: Correct.

Mr. Bob Delaney: What role is your firm playing in assisting the Ministry of Government Services in responding to this motion from the committee right now?

Mr. Chuck Rothman: I'm not involved in that project myself, but my understanding is that, subsequent to my work with the Information and Privacy Commissioner, Wortzman Nickle was retained to review information that the Ministry of Government Services provided to us.

Mr. Bob Delaney: Has your review involved, in any way, working with political staff?

Mr. Chuck Rothman: I don't know. I'm not involved in that at all, so I can't answer that.

Mr. Bob Delaney: Okay. Let's see. Who are some of the clients of your firm? Can you give us an idea?

Mr. Chuck Rothman: The types of clients?

Mr. Bob Delaney: Yes.

Mr. Chuck Rothman: Other law firms, corporations—large corporations, small corporations. That's pretty much it. That's our clients.

Mr. Bob Delaney: It strikes me that, by virtue of using an enterprise system, you've got to be at least a threshold size, so I would be very surprised if I'd heard you say "a range of small businesses."

What are some of the policies on retention among some of the other firms you work with?

Mr. Chuck Rothman: The details of the retention policies?

Mr. Bob Delaney: In general; what type of parameters do organizations that you typically work with have for document retention?

Mr. Chuck Rothman: They vary. The retention periods are determined by a review of business practices and regulatory requirements. I don't get involved in actually determining retention periods because that generally becomes a legal issue. The practices are generally that individuals are responsible for retention of their records, the ones that they have control of. Where I've seen successful retention periods, there is some sort of auditing process to make sure that people are actually following the requirements.

Mr. Bob Delaney: In what fields would you typically find that type of a policy?

Mr. Chuck Rothman: I've seen it in a number of different corporations: in the entertainment industry; in food

services. I see it mostly where an organization is subjected to a lot of litigation or regulatory issues and they want some way to put some order to their records so that when they are faced with producing something, they can find it very easily.

Mr. Bob Delaney: Chair, at this time, I think I'm done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Mr. Rothman. Thank you very, very much for being here. I know you're a private citizen with a company, and it takes time for you to be here. We really appreciate that.

On the 10th of July, I received a phone call in North Bay, my home town, from Dr. Ann Cavoukian, the privacy commissioner, and I took notes. I just want to go through some of those. We were two non-technical people speaking about a very technical issue. I scribbled notes as she was talking. I just want to maybe put some meat on the bones of some of these, if I may.

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She said, "Yesterday afternoon," referring to the 9th, "new records were found." She said that it was a result of my motion on the 25th of June asking for Craig MacLennan email by the 9th of July, and MGS was basically asked to "look under the hood." This is what she's telling me. She says she hit the roof when she got the meeting or a phone call—I didn't write down how it came—from MGS, the deputy minister, the CIO and a lawyer. Here's what I wrote down. I just need some direction on this. She said she was told—so this is all sort of third down the chain. MGS told her that active emails, when deleted, go into a bucket, not the RAID system—as we were earlier told, everything was through this RAID software—but an Enterprise Vault. Give me more meat on the bones. It goes into a bucket called an Enterprise Vault. How would you have described that? Again, she's remembering what she was told. She told me. I'm trying to take some notes. I'm just trying to get to the meat of this.

Mr. Chuck Rothman: I'm not sure that that's entirely correct. Deleted emails don't go into the vault. Depending on how the vault is configured, either every email goes in there, or emails, after a certain period of time, that are not deleted and that are still within a user's mailbox will be moved into the vault.

Mr. Victor Fedeli: The next sentence I wrote down just says "30 days." I don't know, what would I have been referring to or what would I—

Mr. Chuck Rothman: That probably means that after an email resides in a user's mailbox for 30 days, it's moved from the email server storage into the vault storage.

Mr. Victor Fedeli: Okay. The next sentence I wrote down: "If you don't do a double delete, it goes into this vault." Does that make any sense? Again, I'm not questioning the privacy commissioner; I'm questioning my own writing.

Mr. Chuck Rothman: I actually have no idea what that means.

Mr. Victor Fedeli: Okay. When I wrote my next sentence, I wrote, “When staff leaves, the whole thing is decommissioned.” Do you understand any—

Mr. Chuck Rothman: The whole thing?

Mr. Victor Fedeli: Well, I don’t know what “the whole thing” was. These are my notes from a month ago to myself. She said, “Craig”—I presumed MacLennan when I wrote this—“was decommissioned on September 12.”

Mr. Chuck Rothman: Are you talking about his mailbox?

Mr. Victor Fedeli: Yes.

The Chair (Mr. Shafiq Qadri): As opposed to himself.

Mr. Chuck Rothman: If you’re talking about his mailbox—I guess I wouldn’t have used the term “decommissioned,” but perhaps that’s what you’re talking about.

Mr. Victor Fedeli: Okay. Then the next one was the most striking sentence. This is what she was apparently told by MGS and/or the CIO: “There can be an odd ‘orphan vault’ that escapes the system and doesn’t get wiped.” Do you know what we’re referring to in that sentence?

Mr. Chuck Rothman: Well, my understanding of what an orphan vault is—

Mr. Victor Fedeli: So there is such an expression as “orphan vault”?

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: Okay.

Mr. Chuck Rothman: If you delete a user’s mailbox from the Microsoft Exchange email system, the information that has been archived may not automatically get removed at the same time. Depending on how they have the system configured, you may have to actually do a separate step to delete the information in the archive. That may be what the double delete that you’re talking about is. If you delete the mailbox but you don’t delete the archive, then the information in the archive will still be there. It’s just that an end user could not access it. IT people would be able to access it, but an end user wouldn’t because the mailbox that it was linked to no longer exists.

Mr. Victor Fedeli: When Craig MacLennan said here, under oath, he deleted his email, what does that mean, then? Does that mean he hit the “delete” button?

Mr. Chuck Rothman: He would probably be using Microsoft Outlook on his computer. So deleting the email would mean selecting the email and either pressing the “delete” key or however you delete it. Actually, what that does in Outlook is it just moves the email from his inbox—or sent box or whatever—into the deleted items box.

Mr. Victor Fedeli: Okay. So when you delete the deleted items box, what happens?

Mr. Chuck Rothman: The email is actually removed from the email server and, depending on how the archive system is configured, if the email has been archived, it

will be removed from the archive system as well, but that all depends on, first of all, whether the email was archived and how the archiving system is configured. I don’t have the information on that, so I don’t know.

Mr. Victor Fedeli: So you delete your email, then you delete the deleted. Does that go into this Enterprise Vault?

Mr. Chuck Rothman: No. The Enterprise Vault doesn’t have anything to do with the deletion of emails. The Enterprise Vault is just another area where intact, undeleted emails get stored.

Mr. Victor Fedeli: Wait; tell me that again.

Mr. Chuck Rothman: The Enterprise Vault is another storage area for intact emails. If an email exists within the user’s mailbox, it may be stored on the email server’s storage device or it may be stored in the archiving system storage device.

Mr. Victor Fedeli: On that day, on the 9th, I think both the privacy commissioner and I were under the impression that this Enterprise Vault was where the records were found. Is that accurate or not accurate?

Mr. Chuck Rothman: Well, I don’t have any direct knowledge of that, but from what I read in the Globe and Mail, it said it was on a secondary storage device. What I understand now is that there’s this Symantec vault, which is generally a secondary storage device, so that makes sense.

Mr. Victor Fedeli: Is that the Enterprise Vault?

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: But these are deleted emails. I just can’t quite get it straight—

Mr. Chuck Rothman: Well, no. It’s another copy.

Mr. Victor Fedeli: Oh, okay. So when you have an email, a copy of it goes into that vault? If you’re over on the other hand, deleting the email, they don’t get deleted from the Enterprise Vault? I’m just trying to put this in English. I truly don’t understand it.

Mr. Chuck Rothman: It’s not a copy. Essentially what happens is, when an email moves from the email server into the vault—

Mr. Victor Fedeli: And it does that automatically?

Mr. Chuck Rothman: Well, you said 30 days, so automatically. If an email is in the person’s mailbox at the 30-day point, the physical email—and, I guess, its attachments, if there are any—is moved from the hard drive that the email server uses to the hard drive that the vault uses.

What happens on the email server is that a little placeholder is created; that’s generally called an email stub, but it’s just a little placeholder. It doesn’t have the actual contents of the email. If you look at that placeholder by itself it’ll just say, “This email has been archived,” but what the user sees when they go into their mailbox is the actual email, because behind the scenes what happens is this placeholder says, “No, I’m not the real email. Go over here to get the real email.”

From what you’re describing to me, when his mailbox was deleted, all these placeholders were deleted, but the actual emails that had been moved over to the archiving

system were no longer deleted. It's just that you didn't have the placeholders anymore.

Mr. Victor Fedeli: I understand that. Believe it or not, I actually do.

So when Dr. Cavoukian said that a lot of records were found and a significant number are responsive to the gas plant, I believe and I understood that she was talking either about the Enterprise Vault or the orphan vault that escapes the system and doesn't get wiped. Where am I on that assumption?

Mr. Chuck Rothman: It's the same.

Mr. Victor Fedeli: The same?

Mr. Chuck Rothman: Yes. You can essentially consider it to be an orphan area within the vault.

Mr. Victor Fedeli: Okay. Because it's off-site, if you will, from the original email—the Outlook email, the deleted email—or off-server?

Mr. Chuck Rothman: Perhaps an easier way to understand this is: If you remember, in libraries they used to have card catalogues. You would go to the card catalogue, and there would be a little card that described the book, and the book was on the shelf somewhere. In this case, the card catalogue points to an email which is stored somewhere else. If those cards get destroyed, the book is still on the shelf somewhere; it's just that you can't find it because you don't have the reference to it anymore.

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In this case, what happened was, the email stubs or the cards that pointed to the emails got deleted when the mailbox was deleted, but the actual emails stayed there. They stayed on the shelf.

Mr. Victor Fedeli: Would MGS or the CIO have known of these Enterprise Vaults, in your opinion? Would they know of their existence or how they function?

Mr. Chuck Rothman: MGS?

Mr. Victor Fedeli: Ministry of Government Services.

Mr. Chuck Rothman: Yes. I would think they'd have to. They're the ones who run it.

Mr. Victor Fedeli: Okay. Dr. Cavoukian says that no one ever told her committee, her group, that there was such a thing as an Enterprise Vault. You were involved in a portion of the report writing. Would that have ever been discussed?

Mr. Chuck Rothman: Yes. When I got MGS's original report, that was one of the questions I asked: whether there was any archiving system associated with the email system. I was told the answer to that question was, "No, there isn't."

Mr. Victor Fedeli: You were told by the Ministry of Government Services that there wasn't.

Mr. Chuck Rothman: I was told by information and privacy, who, I understand, posed the question to the Ministry of Government Services.

Mr. Victor Fedeli: And the question was, "Is there an archiving system?"

Mr. Chuck Rothman: Correct.

Mr. Victor Fedeli: This RAID: Would that be an archiving system?

Mr. Chuck Rothman: No. RAID is just a physical storage device; essentially a big hard drive.

Mr. Victor Fedeli: So it's not that that they were referring to. This is the Enterprise Vault.

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: Dr. Cavoukian told you that they asked about an archiving system and were told, "There isn't any."

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: Okay. And is the Enterprise Vault an archiving system?

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: And this occurred around when? What months? To the best of your memory.

Mr. Chuck Rothman: I believe it was in May—

Mr. Victor Fedeli: Was it May or June?

Mr. Chuck Rothman: No, it was in May. It may have been either the end of May or beginning of June.

Mr. Victor Fedeli: Not in April.

Mr. Chuck Rothman: No, it wasn't in April.

Mr. Victor Fedeli: In May?

Mr. Chuck Rothman: Yes. Actually, I'm sure it was in May.

Mr. Victor Fedeli: In May, Dr. Cavoukian told you that MGS told her, in response to her question, "There is no archiving system."

Mr. Chuck Rothman: Oh, that was probably the beginning of June.

Mr. Victor Fedeli: June. That's fine.

Mr. Chuck Rothman: It was just before the report came out.

Mr. Victor Fedeli: But not in April.

Mr. Chuck Rothman: No.

Mr. Victor Fedeli: So she says that—Dr. Cavoukian, I should say, said that no one told her there was this system. You're telling us in fact that question was indeed posed to MGS: "Is there an archiving system?"

Mr. Chuck Rothman: I assume that the Information and Privacy Commissioner asked MGS that question.

Mr. Victor Fedeli: Because you asked her.

Mr. Chuck Rothman: Right.

Mr. Victor Fedeli: And her answer to you was?

Mr. Chuck Rothman: It was no.

Mr. Victor Fedeli: Okay. I'm fine, Chair. Thank you very much, Mr. Rothman; appreciate it.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Fedeli. To the NDP side. Monsieur Bisson.

Mr. Gilles Bisson: So, essentially, the way the system works is pretty simple. You write an email, it goes to the exchange server and, at one point within 30 days, a backup is made. Right? Essentially, that's the way—

Mr. Chuck Rothman: It's not a backup. The email is moved from the email server to the archiving system. It's not another copy.

Mr. Gilles Bisson: So automatically it'll move off the exchange server and go to the backup system?

Mr. Chuck Rothman: Well, to the archiving system.

Mr. Gilles Bisson: Oh, archiving.

Mr. Chuck Rothman: Because “backup” means a different thing.

Mr. Gilles Bisson: What’s the reason for that? Just because the exchange server would become overloaded?

Mr. Chuck Rothman: Generally, yes.

Mr. Gilles Bisson: That’s why they do it.

All right. So you hit “delete” on your email, on your computer; it will delete whatever happens to be sitting in the exchange server but not necessarily what’s on the backup, as I call it.

Mr. Chuck Rothman: That depends. That’s what I’ve been saying: that it depends on how the archiving system is set up. It may actually delete the email in the archiving system when you press “delete” on your computer. Or it may not let you delete the email.

Mr. Gilles Bisson: So let me just back up. After 30 days that an email is sitting on the exchange server, it goes to this—what is it called again?

Mr. Chuck Rothman: Archiving system.

Mr. Gilles Bisson: You’re calling it “archive”; I call it “backup,” but it’s not. Okay, no, I’ve got you.

So it goes and sits on the archive, so when I go looking, and I want to read that email, it just directs it to the archiving system.

Mr. Chuck Rothman: Correct.

Mr. Gilles Bisson: Is there a backup to the archive?

Mr. Chuck Rothman: I don’t know.

Mr. Gilles Bisson: Excuse me? I didn’t hear you.

Mr. Chuck Rothman: I don’t know.

Mr. Gilles Bisson: Okay. So when the people were saying they had deleted their emails, would they have known that the archiving system was there?

Mr. Chuck Rothman: I don’t know.

Mr. Gilles Bisson: So it’s either they knew and didn’t tell us and withheld the information or they were ignorant that there was—and I don’t mean that in a negative turn, but they didn’t know that it existed. Okay.

The Chair (Mr. Shafiq Qaadri): Monsieur Tabuns?

Mr. Peter Tabuns: As you may tell, most of us don’t deal with this stuff on a regular basis.

Mr. Gilles Bisson: Well, some of us.

Mr. Peter Tabuns: Most of us; some of us apparently do. Most of us don’t.

Mr. Gilles Bisson: I knew what the RAID system was.

Mr. Peter Tabuns: I’m glad.

Mr. Gilles Bisson: It’s not the can of spray that you kill the bugs with.

Mr. Peter Tabuns: If someone is deleting all their emails at the end of every day, should any emails show up in the archives?

Mr. Chuck Rothman: If the archive is configured to move it after 30 days, then the answer is no.

Mr. Peter Tabuns: Okay. But if the archive is configured so that every email is saved in the archive, then even if you cleared your inbox every day, the archive would maintain a copy.

Mr. Chuck Rothman: Yes.

Mr. Peter Tabuns: And when a person’s email is deleted from the system, typically the tech people would go and clean out the archive as well.

Mr. Chuck Rothman: If that’s their process.

Mr. Peter Tabuns: It depends on the process and the company. Some people would just simply keep that archive as a permanent record; they might.

Mr. Chuck Rothman: Yes, it’s possible. They may be using the archive as a retention area and so they wouldn’t delete those emails even if they deleted the person’s mailbox.

Mr. Peter Tabuns: And just again, if emails were stored in the archive, when they were deleted on the computer, when the stub was deleted, would there be a record of the deletion of that stub kept anywhere other than the logs that you referred to earlier? Would it show up in the archive that the connection had been severed?

Mr. Chuck Rothman: That’s a good question. I don’t know the answer to that.

Mr. Peter Tabuns: Okay, fair enough. I think Mr. Bisson has a question.

Mr. Gilles Bisson: Yes. I just want to make something clear. The archive, is it on a RAID hard drive?

Mr. Chuck Rothman: Yes. Well, generally, yes.

Mr. Gilles Bisson: We hear and read about the backup tapes. What are those?

Mr. Chuck Rothman: Okay. Those are a completely separate storage system. The information stored on the RAIDs, for lack of a better term—

Mr. Gilles Bisson: The archives.

Mr. Chuck Rothman: —is directly accessible. You can go into your mailbox and pull in the email. The information that’s stored on backup tapes is completely removed from the system, and if you want to recover something that’s on a backup tape—

Mr. Gilles Bisson: You have to ask for it.

Mr. Chuck Rothman: —you have to put the tape back into the tape reader—

Mr. Gilles Bisson: So the process to end up on a backup tape is done from the exchange server or done from the RAID archive system?

Mr. Chuck Rothman: Well, my understanding—the information I got from MGS is that it was the email server that was backed up, but at that time—

Mr. Gilles Bisson: That would be the exchange server.

Mr. Chuck Rothman: The exchange server. But at that time, they didn’t tell me anything about the archiving system, so I don’t know whether that included the archiving system as well.

Mr. Gilles Bisson: So how often are the backups of the exchange server done on tape?

Mr. Chuck Rothman: Daily.

Mr. Gilles Bisson: Okay. So then there would be no need to back up the archive because you’ve already got it from the exchange server, right? Presumably.

Mr. Chuck Rothman: Yes.

Mr. Gilles Bisson: Some of the documents that we have that we're speaking about now are actually from the backup tapes; they're not from the archives.

Mr. Chuck Rothman: Well, I don't know. Actually, there would be a good reason to back up the archives as well because—

Mr. Gilles Bisson: That wasn't my question. Let me get back to that—

Mr. Chuck Rothman: Okay.

Mr. Gilles Bisson: —make a point. The documents that are being discussed as of late, this latest dump of documents, are actually on backup tape; they're not part of the RAID system, the archive.

Mr. Chuck Rothman: No, that I don't know, because I don't know if the archive is being backed up.

Mr. Gilles Bisson: Okay.

Mr. Chuck Rothman: But the tapes are—the primary purpose of the tapes is disaster recovery.

Mr. Gilles Bisson: Yes, I understand.

Mr. Chuck Rothman: Okay? So it would make sense to back up the archive as well because if something happens to the archive system, you want to be able to restore it.

Mr. Gilles Bisson: Okay, but the point is, there's the exchange server to which the daily work of emails is stored and sent and all that stuff; then presumably there's some sort of automatic everything-goes-to-the-archive for space requirement issues, which is essentially on the RAID drives. But then there's a backup made, either from the exchange server, maybe in conjunction with the archive, but there's a backup tape.

Mr. Chuck Rothman: Yes.

Mr. Gilles Bisson: And that backup tape exists, of all the documents.

Mr. Chuck Rothman: For that day.

Mr. Gilles Bisson: That's right.

Mr. Chuck Rothman: Yes.

Mr. Gilles Bisson: And that is where some of these documents that we're talking about currently reside, on the backup tapes, right?

Mr. Chuck Rothman: I don't have any knowledge of that, but—

Mr. Gilles Bisson: Because they keep on referring to tapes in the articles and some of the documents. They keep on referring to tapes, so it's actually from the backup tapes.

Mr. Chuck Rothman: What I read was that the emails were found on a secondary server.

Mr. Gilles Bisson: I guess somewhere along the line somebody started using the word "tapes." That's why I'm asking the question.

Mr. Chuck Rothman: Well, I don't know.

Mr. Gilles Bisson: Can somebody from research or whoever actually let us know just clearly—I understand that you've got the exchange server; I understand that you've got the archive and what the function of those two are, but the backup tapes themselves, if that's where some of these documents are coming from. And are they backed up only from the exchange server or both the

archive and the exchange server? That would answer that question.

In your work, most people know there are backups to most things that we do in life, so it would be safe to assume that those people who were deleting their emails would have known there was some form of backup out there.

Mr. Chuck Rothman: I think it's becoming relatively general knowledge that there are backup systems, and especially anybody who's accidentally deleted an email and called up IT, the first thing they'll say is, "Well, I'll have to restore it from the backup tape." So probably a lot of people know about it.

Mr. Gilles Bisson: So when the privacy commissioner was going through the exercise with MGS, at that point they had said there were no backups. MGS had told her there were no backups?

Mr. Chuck Rothman: Well, what MGS told us originally was that backups were made daily and after 24 hours those tapes are overwritten, and then there are also month-end tapes that are overwritten after a year. One of the questions I asked, or I gave to the Information and Privacy Commissioner to ask MGS, was, has anybody actually physically checked to make sure that there's no additional backup tapes? Because in my experience, I find if you look in the desk drawer, you find a whole bunch of tapes that everybody forgot about. The answer to that question was, "No, there's no additional backup tapes."

Mr. Gilles Bisson: But it turns out there was.

Mr. Chuck Rothman: That I don't have any knowledge of.

Mr. Gilles Bisson: It's kind of odd that they would think that there's no—it just seems odd to me that MGS would say, "No, there's no backups," when in fact there was. What the heck was that all about?

Mr. Chuck Rothman: Actually, it's not that surprising to me.

Mr. Gilles Bisson: Really?

Mr. Chuck Rothman: In dealing with a lot of IT people, they tend to think that, "Well, if this is the process, everybody follows it," and they don't even think—

Mr. Gilles Bisson: IT people wouldn't know that there's backups?

Mr. Chuck Rothman: Well, there may be one IT person working in some cubicle who knew about the tapes, but the senior people probably just assumed that everybody follows the process, and so the tapes never existed.

Mr. Gilles Bisson: In your questions, was there any evidence that the Liberal staffers tried to get the backups deleted?

Mr. Chuck Rothman: No—well, I didn't discuss anything directly with MGS.

Mr. Gilles Bisson: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. To Mr. Delaney.

Mr. Bob Delaney: Well, I think between Mr. Bisson and I, we've asked all of our techie questions. Quite

frankly, Chair, Mr. Rothman has been very helpful and forthright in his responses, and I just want to thank him for his time. We have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Mr. Rothman, a couple of witnesses ago, when I asked a question on a repeat visit, I said, "Why didn't you tell us that the first time you were here?" and he said, "You didn't ask me." So I'm going to ask you a very general question. Is there anything else you want to tell this committee today? Is there anything we've left out? Is there anything you felt was a salient point and you're surprised we haven't asked you? Is there anything you want to say before we leave?

Mr. Chuck Rothman: No, I can't think of anything.

Mr. Victor Fedeli: Okay. I appreciate your time. Again, being a private citizen and an entrepreneur, I appreciate you taking your time to be here today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Thank you, Mr. Rothman.

The committee is recessed until 1 p.m.

The committee recessed from 1204 to 1301.

MR. KEVIN COSTANTE

MR. DAVID NICHOLL

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the meeting of the Standing Committee on Justice Policy to order.

I welcome our next presenters: Mr. Kevin Costante, Deputy Minister of the Ministry of Government Services, associate secretary of cabinet, and Secretary of the Management Board of Cabinet; as well as Mr. David Nicholl, corporate chief information officer, also of the Ministry of Government Services. They will be alternately affirmed and sworn in, with Mr. Costante to be affirmed.

The Clerk pro tem (Mr. Katch Koch): Mr. Costante, do you solemnly affirm that the evidence you shall give to this committee touching the subject of this present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Kevin Costante: I affirm.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Nicholl?

The Clerk pro tem (Mr. Katch Koch): Mr. Nicholl, do you solemnly swear that the evidence you shall give to this committee touching the subject of this present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. David Nicholl: I do.

The Chair (Mr. Shafiq Qaadri): Thank you. Gentlemen, we have five minutes between the two of you, beginning now.

Mr. Kevin Costante: Thank you, Chair. My name is Kevin Costante. I am the Deputy Minister of Government Services. I have been with the Ontario public service for 25 years, and I have served in a number of deputy minister positions.

As mentioned, with me today is David Nicholl, who is Ontario's corporate chief information officer.

I also wish to confirm for the committee that I was not directly involved in any of the gas plant transactions, so I will focus my comments on my ministry's role in responding to the committee's motion of June 25, 2013.

As you are aware, the committee requested that the Ministry of Government Services, or MGS, provide all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent or received by 13 named individuals. The motion further identified and requested that specific keywords be used in identifying responsive documents.

In responding to the committee's motion, we were in a position unique from other ministries. The first unique aspect of the motion was the direction for my ministry to search for the records of members of cabinet and their political staff. This is something which is normally done directly by those offices, because of the separation between the Ontario public service as compared to staff in political offices.

Another unique aspect was that the individuals listed in the motion were not employees of the Ministry of Government Services, and many of them had departed from the public service. In addition, none of the records sought by the committee are MGS records.

Our search, therefore, is an electronic discovery exercise, using electronic search technology.

The government of Ontario's email system is one of the largest in Canada, and we maintain more than 94,000 email accounts. Each day, more than one million emails are sent and received on our system.

To conduct our search, we first located any accounts assigned to the listed individuals. Once those accounts were located, a keyword search was conducted of their entire account. This search identified thousands of pages of records, many of which had no direct or indirect connection to the Oakville or Mississauga transactions. All of those records were reviewed by ministry counsel, to identify those with responsive content. The records were also separately reviewed by the external law firm Wortzman Nickle. The search was therefore very complex and time-consuming.

So far, we have provided to the committee two disclosure packages totalling about 4,700 pages. These disclosures consist mainly of records found in the primary and secondary email accounts accessible in our IT system. Our search for responsive records is an ongoing process. I want to assure the committee that we take the motion very seriously and are making every effort to identify and provide remaining records as quickly as possible. We hope to disclose a third batch of records to the committee later this week or early at the beginning of next week.

On the issue of backup tapes, the OPS maintains backup tapes of electronic records for disaster recovery purposes. These tapes are not a complete archive of records created, sent or received by an individual and are

not considered a normal part of our record-keeping environment.

We do not normally include backup tapes in our legal document disclosure protocols. However, in light of the specific context of the committee's motion, my ministry has assessed where potentially relevant backup tapes may exist and the time and costs associated with restoring and searching those tapes. The existence of backup tapes does not mean that those tapes contain responsive records to the committee's motion. That information cannot be verified until the tapes are restored and have been searched. We await your direction on how you wish us to proceed with that aspect of our search.

As you know, the Information and Privacy Commissioner has expressed concerns with the information the ministry provided her office during her investigation. I wish to confirm for the committee that we fully respect the commissioner's role as an officer of the assembly and sought to co-operate fully with her investigation. I have apologized personally and in writing to the commissioner for the mistakes made in assisting her investigation. We are continuing to work with her office.

Mr. Nicholl and myself would now be happy to answer any of your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. To the government side. Signora Albanese.

Mrs. Laura Albanese: Thank you, Mr. Chair.

Thank you very much for being here today. I would like to start by asking you about the Information and Privacy Commissioner's recent report on record-keeping.

On page 6 of the report, Dr. Cavoukian states, "Throughout this entire investigation, my office received the full co-operation of all parties involved, including the Premier's office, Cabinet Office, the MGS, current and former staff in the Minister of Energy's office, and the Archives of Ontario staff."

When she testified before this committee, she told us, "This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming, and any co-operation we needed was there."

Could you speak a little more in detail about the support and the co-operation you provided to the IPC and her office throughout this investigation?

Mr. Kevin Costante: Yes, I can. Throughout her investigation, there were two meetings with ministry staff where we answered questions and provided information. They were both about an hour long, I understand. Those took place in late April and early May. Following those meetings, there was a series of questions back and forth between the privacy commissioner's staff and staff at the ministry. Most of it was directed through our legal counsel, and we responded to the questions that we were asked. That was the nature of the interaction.

Mrs. Laura Albanese: Thank you. I think that these are important points to get across and get on the record, because some people have been rather quick to point fingers and question the integrity of our public service.

We should be thanking you for all the hard work that you do on a daily basis, so thank you.

I want to fast-forward to June 25, when this committee passed a motion asking your ministry to search for all documents and electronic correspondence related to the gas plant relocations sent or received by a list of 13 individuals, I believe. Was this an unusual request for your ministry?

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Mr. Kevin Costante: It's the first committee motion that this ministry has had. I think all the other motions were to specific ministries: the Ministry of Energy, the Ministry of Finance, Cabinet Office. It was our first motion.

Mrs. Laura Albanese: Given that this request was unprecedented for the Ministry of Government Services, what sort of challenges did it present? What challenges did you have to face searching for the responsive documents?

Mr. Kevin Costante: Upon receiving the motion, a group of knowledgeable staff got together the next day to kind of map out the approach. Obviously, it was going to be an electronic search because we don't actually have the records, other than on our servers and our backup tapes.

One of the debates that went on was the issue of backup tapes. As I mentioned in my opening address, it's not something that we normally use. But we looked at the committee records for that day, when the motion was passed, and it had to do with the privacy commissioner's report, and backup tapes were mentioned in that. The backup tapes are a potential source of additional emails, and therefore when I did respond initially to the committee's motion, we indicated that we were doing the search of our email system and that we had backup tapes and we would be, on the committee's direction, happy to search through them as well.

Mrs. Laura Albanese: Thank you. During the process of responding to the June 25 motion, you wrote that, "Staff in our infrastructure technology services division conducted a forensic review of our servers and have located part of the email account assigned to Mr. MacLennan while he was employed in the office of the Minister of Energy."

Then you go on to say, "IT staff discovered and confirmed this discrepancy on June 28, after they were asked to verify that email accounts assigned to certain individuals named in the motion, including Mr. MacLennan, were deleted in their entirety. A forensic search of our servers revealed that Mr. MacLennan's secondary storage had not been deleted."

Can you take us through what happened here and why these emails were discovered as part of a response to the June 25 motion, but not during your work with the IPC?

Mr. Kevin Costante: Yes, I'll do my best. When the IPC asked about emails for Mr. MacLennan, the response went back that his emails had been deleted. His email account had been deleted in December 2012, and I

believe Mr. MacLennan had left the public service in August of that year. Is it 2012 or 2011? Sorry.

Mr. David Nicholl: It's 2012.

Mr. Kevin Costante: It's 2012. When we were asked whether there were emails, a response went back that said we had deleted his account.

Now, if I step back a bit—and I think from the previous person who testified at the committee earlier today, you'll know that our email accounts consist of a primary and a secondary, or the secondary can also be called the Enterprise Vault. The policy should be, when the email account is deleted, that both the primary and secondary should be deleted. When we went and actually verified—actually went into the system and looked—we found that his primary account had been deleted in September, but the secondary account, the Enterprise Vault, had not been deleted. When we started doing our work on behalf of this committee, we found that secondary vault with emails in it, and that's when we made it known to the privacy commissioner, to the OPP and to this committee.

Mrs. Laura Albanese: As soon as this was discovered, I understand that you met with Commissioner Cavoukian to explain the situation. She responded in a July 12 letter that she was “left with the impression that far less vigour was brought to bear in responding to the inquiries made during my investigation.” You wrote back on July 22 and stated, “I wish to communicate my regret that we did not provide your office with all the information necessary to assist your investigation.” You went on to say, “Our work on the justice policy committee motion has subsequently shown that we had exceptions to our normal protocols regarding deletions of email accounts and the retention of backup tapes that should have been identified and reported to you as part of your investigation.”

Let me ask you: At any point did your office ever intentionally leave out information that was relevant to the IPC's investigation?

Mr. Kevin Costante: There was no intention to mislead or not inform the privacy commissioner. I met with the staff who provided information and asked them that very question. I was assured by all of them that there was no intention to mislead her.

Having said that, we have taken responsibility for the mistakes. We should have told the privacy commissioner and given her a broader explanation of how our email system works and that there's a primary and secondary account. She was informed about backup tapes, and you'll see that in her report.

As well, when we responded to questions, we responded from a policy perspective, and we should have gone in and verified that the reality was the same as the policy. The policy would have been, as I mentioned earlier, to delete both primary and secondary, and that should have happened.

Unfortunately, only the primary account for Mr. MacLennan was deleted, and the secondary was left there in, I think it was called earlier, an orphan vault. That's

what we found when we actually went into the system as a result of the committee's motion coming out of the privacy commissioner's report. We found that secondary vault still in existence, and that's when we made it known, subsequently searched it and provided this committee with the records.

Mrs. Laura Albanese: However, despite the letters and the meetings, it appears that the privacy commissioner was still upset with the mistakes made during this process. I know that in an interview on July 24 on CFRA radio in Ottawa, Ms. Cavoukian said that she felt that she didn't think these oversights by your ministry staff were accidental.

I know that your office has a good working relationship with the commissioner, and perhaps you can chalk her comments up to a sense of frustration, rightfully so. But still, it's a pretty serious allegation. Would you like to respond to that in any way?

Mr. Kevin Costante: I can only respond with what I said earlier. There was no intent on the part of the ministry, and I was assured by the ministry staff who were dealing with the privacy commissioner and her staff that there was no intent, to mislead. Having said that, we made some serious mistakes, and we have taken accountability for those.

Mrs. Laura Albanese: I'd like to ask you about what has been disclosed to the committee so far in response to the June 25 motion. On Monday, July 22, your ministry tabled a package of records from Mr. Chris Bentley, Minister Brad Duguid and Craig MacLennan. The Clerk's office then delivered those records to committee members on July 23. Then on July 26, you provided the Clerk with responsive records from the accounts of the remaining individuals. Is that correct? Is that right?

Mr. Kevin Costante: That's correct. Yes.

Mrs. Laura Albanese: The opposition has alleged that the government was withholding the records because of the by-elections. As we all know, those by-elections took place on August 1, two weeks after these disclosures. So not only are those accusations inappropriate, but I guess they're also incorrect, you would agree.

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You mentioned in your July 9 letter to this committee that “as a result of the complex and time-consuming steps necessary to search for responsive records, the ministry finds it necessary to provide the requested records in stages and commits to produce responsive records as soon as they become available.”

Can you speak to the timing of the disclosures and the plan, moving forward, to respond to all of the remaining parts of the motion?

Mr. Kevin Costante: Just to be clear, I'm going to hand this part, to talk about the timing and the process, to Mr. Nicholl to respond.

In my letters, though, I was clear about the things that we are still looking into. There were some emails that were password-protected that we needed to get into. There were some home and shared drives that we are still in the process of searching. Obviously, we haven't

searched the tapes yet, as well. There were still some accounts from some of the named 13 that we're still looking in, so that will be coming soon.

I'll turn it over to Mr. Nicholl.

Mrs. Laura Albanese: Thank you.

Mr. David Nicholl: That was pretty well it. Basically, password-protected files are a little more difficult for us to actually get into, and quite often we'll actually pass it out to an external firm to do that.

Also, we have two types of file shares. We have your personal file share that you store on a server, and then you have shared files that you can actually share as a group.

Searching for your personal share on a server is relatively straightforward, because we've got your name and we can go and look for it. Searching for a shared-drive folder is actually quite difficult and complex because, literally, we need to check every single one to see if you've got the rights to read or write to it. So those will take us a little while.

As far as the tape backups are concerned, it's volume. It's a pure volume business. We don't typically restore anywhere near that number of tapes. Over the past 12 months, we've probably restored 12 tapes. This is, obviously, in a very different scale, and we'll need to look very carefully at how we do that and how long it's going to take us to do.

But it's a process to go through. It's not difficult; it's just processes and it's time.

Mrs. Laura Albanese: It has now been six weeks since the motion passed and that your staff has been working to comply with the committee's request. Could you provide us a larger understanding of the resources, the time, the cost, to conduct all of the search?

Mr. David Nicholl: We have not done a costing as far as what we've spent at all.

I can take you through the general process that we take to look for emails. What we do is we actually go in and take a look at—we get the respondents; we get the date range. We go and look, first of all, at our primary storage email system and we pull down any emails—any email accounts—for matched names. We go to the secondary storage and we pull down any—you've now learned about the Enterprise Vaults. We pull down out of those Enterprise Vaults for the same named people.

We then pass those over to our corporate security branch, and our corporate security branch then take the terms that you've given—the gas plants, Mississauga, Oakville, all the names that you've got that you're looking for—and they basically run that through software and they pull out responsive records.

We produce those responsive records. We pass them over to our legal services branch, and our legal services branch basically go through every single email and every attachment, to determine whether it's a responsive record or not, and that's what takes the time.

Mrs. Laura Albanese: Well, thank you very much for that explanation. I will turn it over to my colleague MPP Delaney.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: Thank you very much, and welcome. Thank you for coming this afternoon.

You started to talk about the backup tapes that you referenced in your July 22 letter to the committee. You said that, to use your words, "MGS has accessed where potentially responsive records may be located on backup tapes of the email accounts of named individuals" and provided a list of the number of backup tapes that had been identified for each individual.

I note that the existence of these backup tapes was used by the opposition, I think, inaccurately. In fact, although the allegation has been made that they're full of—I'm going to say "Liberal"—gas plant emails, my understanding is that the content of these backup tapes is actually unknown. Is that correct?

Mr. Kevin Costante: That's correct.

Mr. Bob Delaney: Okay. So there's no way of knowing at this juncture if there are any responsive records, let alone how many, on these tapes. Correct?

Mr. Kevin Costante: We haven't searched them. I can't say one way or the other.

Mr. Bob Delaney: No, that's fine. That's just what I wanted to clarify.

You state in your letter that backup tapes contain a snapshot of the contents of an email account at one point in time—which, of course, is the definition of a backup—so, accordingly, they're not a complete archive of the records created or sent or in fact received by OPS employees.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Bob Delaney: Why do the backup tapes exist? What is the purpose that you intend to use them for?

Mr. Kevin Costante: The main purpose is for disaster recovery. If, for some reason, we had a failure of our servers, we would be able to quickly restore and get our email system back up and running again. I don't know if David may want to add some technical points to that, but that's primarily the reason.

Mr. Bob Delaney: So, substantially, to be able to return an employee to the point that they can do useful work.

Mr. Kevin Costante: Correct.

Mr. Bob Delaney: Okay. Thanks, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side: Mr. Fedeli?

Mr. Victor Fedeli: Thank you, Chair. Thank you for being here, gentlemen. I know that Ms. Albanese started off by reading the excerpts from the commissioner's letter, talking about co-operation and whatnot, in her first report. I would like to then enter a couple of sentences from her letter, her statement, on the discovery of email.

It begins with, "I was dismayed to learn that my office had been misinformed by Ministry of Government Services staff regarding the existence of records that would have been relevant to the special investigation report that I had released on June 5—Deleting Accountability: Records Management Practices of Political Staff."

She goes on to say, “I am appalled that we were provided with incorrect information during the course of my investigation, that was misleading. I am, however, very pleased that these records have now been found. After receiving a full accounting from the Ministry of Government Services, I will be issuing an addendum to my report. I have also written to the Deputy Minister of the Ministry of Government Services asking him to take action to ensure that there is no further destruction of any records whatsoever for any other members of the Premier’s office whose emails were thought to be destroyed.”

In her letter, she feels appalled, dismayed, misinformed and misled.

Earlier testimony, just after 10:30, talked about how in June, MGS—well, I’ll give you the chance to answer that. The gentleman that was here before you asked a question, whether there were archives, and the answer to him by the privacy commissioner was, “I asked MGS and they said there were no archives.” Was that accurate?

Mr. Kevin Costante: I think we were asked, as I understand it from staff—I wasn’t at that particular meeting, and it may have been in a follow-up question after the meeting—whether there was an auto-archiver—that was the question that came to us—which meant that the email system was configured to save all emails. Some organizations do do that.

Our email system is not configured to save all emails; we do not have an auto-archiver. So we responded to the privacy commissioner’s office’s specific question about whether we have an auto-archiver. We do not employ an auto-archiver.

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Having said that, Mr. Fedeli, we should have talked to them further about the Enterprise Vault, and that was a fault on our part. I have to say, the Enterprise Vault, the secondary storage, is an integral part of our email system; we treat it as one. I think we sent a technical deck to the committee, and you’ll see that when most staff turn on their email system, both show up. Both the primary and the secondary are there on the screen, and I think the gentleman this morning talked about that.

Mr. Victor Fedeli: So if it’s an integral part of the email system, when the privacy commissioner asked specifically about archiving, why would no one have told her there is a primary and a secondary archive? What would the—

Mr. Kevin Costante: We should have. I think it was perhaps such an integral part that we didn’t—I can’t speak for the staff who didn’t do that.

I can understand that you’re upset—

Mr. Victor Fedeli: Well, of course I’m upset.

Mr. Kevin Costante: Yes.

Mr. Victor Fedeli: When she called me in North Bay on the 10th of July, she said she was very upset at the latest turn of events, that new records had been found and she felt misled. She said your ministry was asked to look under the hood with respect to my June 25 motion,

looking for emails specifically about Craig MacLennan and others.

Here’s how she described it. This Enterprise Vault was discovered. There can be the odd “orphan” vault that escapes the system and doesn’t get wiped. She was under the opinion that day, according to my notes that I took—I took five pages of notes on the phone call—that this was a recently discovered vault. How do you describe that?

Mr. Kevin Costante: My understanding of the progression is that the ministry received the motion on the 25th; on the 26th, there was a meeting, as I said, to discuss how we were going to approach addressing the committee’s motion. Questions began to be asked by our legal counsel, frankly, about the technicalities of our system. Our staff knew about both the primary and the secondary, obviously. The legal counsel asked, “Is the secondary system, the Enterprise Vault, stored on the same server as the primary?” The answer was no.

I then followed up—one question does lead to another—whether, when they deleted Mr. MacLennan’s account, “Are we sure that both the primary and the secondary were deleted?” At that point, staff checked and found that Mr. MacLennan’s primary account had indeed been deleted as per protocol, but the secondary hadn’t and it still existed. At that point, we didn’t know what was in the account. It could have been full of press clippings, for all we know. They had to go through the account, and then it had to be searched using the search terms. I understand—

Mr. Victor Fedeli: Excuse me. Is this the tape again or are these emails—

Mr. Kevin Costante: No, this is an email account.

Mr. Victor Fedeli: Okay. So these are emails.

Mr. Kevin Costante: This is not tapes. This is a regular email account. It’s the secondary account.

That was made available—I understand the IT component of that was done by the Friday. Legal counsel started looking through the account Sunday, Monday, found responsive emails, and that’s when we began alerting people.

Mr. Victor Fedeli: What took so long, then, if that Sunday and Monday the responsive emails were found? What took so long to get them to us?

Mr. Kevin Costante: I believe that was a primary view of the piece: We had to go through all of them. I don’t know if Dave knows more about that. Sorry, I don’t know that I know the specifics of that piece. Obviously, when we disclosed later that month, we provided more than just Mr. MacLennan’s; we provided Mr. Duguid’s and Mr. Bentley’s—

Mr. Victor Fedeli: Well, there were two pages from Minister Bentley and one page from Minister Duguid and 3,000 pages from—so let’s not confuse those three.

Mr. Kevin Costante: We do have a process, once our legal counsel goes through it, of having the external legal counsel, Wortzman Nickle, actually also look through it to verify that we have it correct.

Mr. Victor Fedeli: Who else looks at these emails, in your opinion? Would you know?

Mr. Kevin Costante: Yes, I would. As per normal protocol in terms of releasing public documents, political staff from Minister Milloy's also—

Mr. Gilles Bisson: I didn't hear you; sorry.

Mr. Kevin Costante: Sorry. Political staff from Minister Milloy's office also reviewed the email packages going out.

I should be clear at this point that the decisions made as to what was responsive or not were done by ministry legal counsel. They did not influence, nor did they ask us to take anything out of the package that was going to be disclosed, nor did they influence the timing of disclosure. They tended to review the records after we had done our legal reviews.

Mr. Victor Fedeli: Our experience, of course, with document distribution is very different than that. When we asked for the original tranche of documents, we received 36,000 and were indeed told, "This is all the documents." Several dozen people stood up—more than two dozen people stood up in the Legislature and said, "You have all the documents." Yet only two weeks later, we received 20,000 more, and it came to light here through sworn testimony that why we have 20,000 more is, those documents were withheld purposefully on the instruction of Ministry of Energy personnel to the Ontario Power Authority. So I'll ask you: Do you believe that all of the email were distributed to us, or were any held back like they were in the past?

Mr. Kevin Costante: I don't think we've held any back. As I mentioned in my—

Mr. Victor Fedeli: After the first batch?

Mr. Kevin Costante:—two correspondences with the committee, I was very clear that we're doing these on a rolling basis. It's quite a heavy workload, and we're working through it. I mentioned also in my opening statement that we have a third disclosure package that is being put together, and I hope to get it out later this week or early next week.

I think one of the things, Mr. Fedeli, that we've struggled with is, at what point do we disclose? Do we give you a package every day? Every week? What we've tried to do is give it to you in groupings. The first grouping was staff from the ministry who were involved with the Ministry of Energy. The second grouping was primarily the Premier's office. In this next tranche of records, we will report on, I think, everything that we've found in the primary and secondary, including any orphan vaults. We are also hoping to get through all of the home shared files. I think we can give you the numbers of emails that are password-protected or are distorted in some way that require some additional time. That's what we're hoping to have in this next package. We're trying to group it so that I'm not dribbling it to you every day, because I've also heard criticisms of the dribble. That's what we're attempting to do.

Mr. Victor Fedeli: You can appreciate our skepticism and our frustration when this all started with a very simple question from my colleague Rob Leone, the member from Cambridge: How much did it cost to cancel

the Mississauga gas plant? How much did it cost to cancel the Oakville gas plant? Two very simple questions; could have been answered and moved on. Sadly, we allege, and it has borne fruit, the continuation of emails that are redacted, missing, removed, deleted, deleted-deleted. You have to appreciate our frustration that you sit here and tell us we're going to get more info when we have several Liberal caucus members, including nine cabinet ministers, standing up and saying, "You have all the information," very indignant, pointing their fingers at us, saying that we had everything, back when we had 36,000, when we'd have an email from Fred to Tom, and we'd get Tom's answer back, which included an email from Janet, but there's no trail of Janet's emails, if you know what I mean.

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Here we are, a year later. We still don't know the fundamental answer to the fundamental question: How much did it cost to cancel the Oakville power plant? Here we are, a year later. You have to appreciate our genuine frustration and our genuine lack of trust and our skepticism. Each week we go by, thinking this could be the week we're going to settle it all down, and something new pops up, some latest cover-up, if you will, towards this scandal, this ongoing scandal.

I've said this many times: Much like Richard Nixon and Watergate, the cover-up now is far greater than the original issue—far greater now. This has so many layers.

You didn't tell the privacy commissioner about the Enterprise Vault when she asked about archives. I'm concerned about that. I'm hearing from you that it's a simple miscommunication or a simple "We forgot to tell her" or "We didn't think it important to tell her." Can you just give me, one more time, why?

Mr. Kevin Costante: I think in my letter to her, and part of the apology as well, we were very—we should have done a very in-depth end-to-end review of our system. It is very complicated, and I think you heard that from the gentleman this morning, how absolutely complicated it is. That was one thing—

Mr. Victor Fedeli: Part of what we heard from him too was that there are no archives.

Mr. Kevin Costante: We use secondary storage. As I understand it, and Mr. Nicholl can help me, some organizations, through the use of their Outlook system, actually enable a copy to be made of every single email, and it is kept in what's called an auto-archive. That's what we were asked about, and that's what we responded to. We do not enable that. We do have a secondary vault, which is—

Mr. Victor Fedeli: The Enterprise?

Mr. Kevin Costante: Yes. Emails go to that secondary system after 30 days.

Mr. Victor Fedeli: And nobody thought to talk about that to her or maybe have a peek in it—look under the hood—in that file?

Mr. Kevin Costante: I think we responded in general terms. We should have, and again, I think that was—

Mr. Victor Fedeli: Is this a popular account or a popular drive or a popular archive to be talking about or looking into?

Mr. Kevin Costante: It's on the email system of most civil servants. In the technical deck that—

Mr. Victor Fedeli: So nobody came forward and said, "Well, hang on a second." There's a lot of employees there. Nobody, not one employee, ever said, "Hey, heads up. We've got this Enterprise." She told me, she being the privacy commissioner, Dr. Cavoukian, that this was kind of just discovered.

Mr. Kevin Costante: I don't think the Enterprise Vault was just discovered. I think Mr. Craig MacLennan's orphaned Enterprise Vault was just discovered. I think that's what she was telling you—

Mr. Victor Fedeli: So nobody thought to look in that, in an Enterprise Vault, for his email.

Mr. Kevin Costante: No.

Mr. Victor Fedeli: Nobody thought to?

Mr. Kevin Costante: We had a record that his email account, which to us would have meant both the primary and the secondary, had been deleted on September 12. We assumed it was both; we were wrong. We should have checked, and that was a mistake on our part.

Mr. Victor Fedeli: When we've been searching for the past year for email or correspondence or Outlook calendar, is anybody ever looking in the Enterprise Vault for things?

Mr. Kevin Costante: Yes, because the Enterprise Vault is on people's email accounts, so they would be searching through that as well.

Mr. Victor Fedeli: But nobody looked in the Enterprise Vault for—

Mr. Kevin Costante: The primary would have been gone. I think the gentleman this morning said there were no links to it. They had all been deleted. So this thing sat on the shelf but "wasn't in the card catalogue" was, I think, the thing that he said—

Mr. Victor Fedeli: Why? Because he deleted his email?

Mr. Kevin Costante: Because his primary account had been deleted, as per protocol. When people leave the Ontario public service, after their responsibility to maintain their records—which we've all been very clear about—they're supposed to delete their email account.

Mr. Victor Fedeli: I understand.

Mr. Kevin Costante: So we deleted his account. We should have deleted both his primary and his secondary. They deleted his primary—

Mr. Victor Fedeli: Who is "they"?

Mr. Kevin Costante: Our MGS staff. We get direction from the ministry and we delete on that basis.

Mr. Victor Fedeli: So how does deleting the primary and the secondary archives meet with the archiving requirement for five years? Where would that get archived, then, if the primary and secondary—

Mr. Kevin Costante: So, before there's a deletion, staff are supposed to keep whatever business records they're supposed to—get rid of transitory records,

personal records, that sort of thing. So they are supposed to keep those. They are supposed to put them on a shared drive perhaps or provide them somehow to their managers so that they're available once they leave.

Mr. Victor Fedeli: Is part of your protocol to ask whether the archive has been established properly before deleting the primary and secondary archive?

Mr. Kevin Costante: I don't believe it is.

Mr. Victor Fedeli: So you hit the delete of the primary and you hit the delete of the secondary, trusting that somebody kept their email?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: Thanks, Chair.

Mr. Kevin Costante: We are trusting that they follow the policy where it is very explicit that they're supposed to. But, no, MGS staff do not go and check.

Mr. Victor Fedeli: Okay. The privacy commissioner also said, in my handwritten notes, that no one ever told her about this other archive. That is accurate? Nobody told Dr. Cavoukian there is a secondary—

Mr. Kevin Costante: That was my understanding. We did not mention or talk to her about the Enterprise Vault.

Mr. Victor Fedeli: So the Enterprise Vault is a popular discussion except when it came to the privacy commissioner? It's discussed, it's used, it's understood?

Mr. Kevin Costante: Yes.

Mr. Victor Fedeli: Except when she asked for archives, and the answer was, "There are none."

Mr. Kevin Costante: I think our staff interpreted it differently. We interpreted that it was about the auto-archiving function of Outlook, which we do not use.

Mr. Victor Fedeli: That's a pretty narrow interpretation, when she's asking about archives and is told that there aren't any—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Victor Fedeli: We'll pick it up.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Monsieur Bisson.

Mr. Gilles Bisson: Yes, I just have a couple of questions, so I'll leave the bulk of the time to my colleague. Do you at any time brief political staff in regard to how the email system works as far as deleting emails, archives and all that kind of stuff? So I'm a new staffer—

Mr. Kevin Costante: Do I personally?

Mr. Gilles Bisson: No, you're MGS. I'm a staffer hired in the Premier's office, the minister's office or whatever. Does anybody from government services or anybody in the entity of government brief the minister's staff or the chief of staff or someone how your email system works and how things are deleted?

Mr. Kevin Costante: On how the email system works, they may call a helpline to get that—

Mr. Gilles Bisson: It's not what I'm asking.

Mr. Kevin Costante: I don't think we do regular briefings unless individual ministries are asked to do that. I assume they would help political staff—

Mr. Gilles Bisson: So Bob Delaney is made a new minister, right? Bob Delaney is now minister of whatever, finally. Does anybody go sit down with him or his staff—

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, I need a formal motion for that, please.

Interjection.

Mr. Gilles Bisson: I may not get a seconder; that's the problem.

So my question is this: I'm a brand new minister. I've got brand new political staff that have just come on board. At any time does MGS or some entity from government sit down with the minister or his or her staff and say, "This is how the email system works. This is how backups work. This is what you should be aware of?"

Mr. Kevin Costante: I would assume that if a minister asked for it on behalf of his staff, people likely from the ministry, perhaps from government services, would go and provide them with a briefing, a demonstration about how it works.

Mr. Gilles Bisson: I understand if it's asked. I'm asking, is it a natural reflex of MGS or somebody in government to brief a minister and his or her staff, once their newly minted ministers are announced, how this system works? Does anybody do that automatically?

Mr. Kevin Costante: I think on how it works, I can't say there's a lot of attention paid on how to delete and all the intricacies that we're talking about here in terms of Enterprise Vaults and backup tapes. I doubt that anyone would get into that level of detail.

Mr. Gilles Bisson: So if I'm a political staffer and I'm about to hit "delete" on my computer thinking I'm deleting everything, do I have a sense that there's a backup out there? I would certainly think there is, and I'm just a member of the lowly opposition.

Mr. Kevin Costante: It's hard for me to generalize the whole political staff. Some of them will have greater IT knowledge than others.

Mr. Gilles Bisson: So you don't have a proactive approach to—

Mr. Kevin Costante: No.

Mr. Gilles Bisson: No? That's interesting.

Mr. Kevin Costante: The one thing that we do do, though, in transition binders, we do provide information about proper recordkeeping and the responsibility to keep records under the Archives and Recordkeeping Act.

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Mr. Gilles Bisson: To the Chair, I would request—I move a motion that we get a copy of those briefing binders.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. We will undertake that.

Mr. Gilles Bisson: Afterwards, yes? Okay.

Okay, second question: Is there still data on the archive that has not been released?

Mr. Kevin Costante: Data on the—

Mr. Gilles Bisson: On the archive. So I write an email. It goes to the Enterprise, then it goes to, essential-

ly, the RAID drive, which is the bulk storage for archiving.

Mr. Kevin Costante: Yes.

Mr. Gilles Bisson: Is there still information on the auto-archives that has not been released?

Mr. Kevin Costante: I think that in our third package we will finish talking about the primary and secondary, if that's what you're meaning.

Mr. Gilles Bisson: Yes. That's what I'm talking about, yes.

Mr. Kevin Costante: We will complete that in this next package.

Mr. Gilles Bisson: So by the next package we will have everything—

Mr. Kevin Costante: We should be done for these 13 individuals for these search terms.

Mr. Gilles Bisson: —off the primary and the secondary, but there would still be stuff—

Mr. Kevin Costante: That's right, and the orphan vaults.

Mr. Gilles Bisson: Yes.

Mr. Kevin Costante: There will still be tapes that we haven't searched yet—

Mr. Gilles Bisson: But the tapes are the backups.

Mr. Kevin Costante: Tapes of the primaries.

Mr. Gilles Bisson: Yes. They're backups.

Mr. Kevin Costante: The backup tapes.

Mr. Gilles Bisson: Yes, that's right.

Mr. Kevin Costante: The backup tapes, we haven't looked at yet.

Mr. Gilles Bisson: Okay, which brings me to my—

Mr. Kevin Costante: And we haven't looked at some of the emails that were password-protected or were corrupted somehow—that need to be broken into, if you will—and we haven't completed our work on home and group-shared drives, so that's all the work to come.

Mr. Gilles Bisson: So when you said everything that's password-protected—we all have passwords. They're all password-protected. Explain that a bit.

Mr. Kevin Costante: Sorry. Sometimes for an individual document, you can password-protect it.

Mr. Gilles Bisson: I see. If you want to protect an email or a document, it's in an effort—

Mr. Kevin Costante: Correct.

Mr. Gilles Bisson: Okay, gotcha. So, anyways, in retrieving the data off the backup tapes, we hear this number banded around of \$3.5 million for pulling the information off of the tape. They're essentially backups. The backups can be restored to a drive and a search query can be put on the drive in order to get the information off. It's not all that complicated.

Mr. Kevin Costante: That's correct.

Mr. Gilles Bisson: Why are you guys making it all that complicated? Or, who's making it complicated? That should be my question.

Mr. Kevin Costante: It is time-consuming and resource-consuming. Each tape—I think I reported this in my—

Mr. Gilles Bisson: How many tapes in total for backup?

Mr. Kevin Costante: For the 13 individuals, for the time period, 3,200 and change.

Mr. Gilles Bisson: Tapes?

Mr. Kevin Costante: Tapes, yes.

Mr. Gilles Bisson: So that means to say that you've already looked at the tapes and you've found those names in them.

Mr. Kevin Costante: No, no. We found tapes for the 13 individuals for the time period. We haven't searched those tapes to see if there are responsive records yet.

Mr. Gilles Bisson: But it's as simple as—

Mr. Kevin Costante: As we said, we only use these tapes usually for disaster recovery—

Mr. Gilles Bisson: I understand. Yes, they're backups.

Mr. Kevin Costante: —and they're snapshots, right?

Mr. Gilles Bisson: I know. They're backups, but all of the data that existed on that day would be on that backup tape, and it's as simple as transferring it to a hard drive, doing a search query and getting the information off, right?

Mr. Kevin Costante: I can have Mr. Nicholl describe the process if you wish.

Mr. Gilles Bisson: No, but basically that's what you're doing.

Mr. Kevin Costante: I'm not a technology person.

Mr. Gilles Bisson: I don't need the long version, because I've got limited time, but essentially that's what you do, right? In order to get that information, you drop it off to—

Mr. Kevin Costante: Yes. We have to put it into something that's searchable, and then we have to search it.

Mr. Gilles Bisson: Last question, because my colleague has got a series of questions. Earlier, you were just responding to questions and you were saying, essentially, that the privacy commissioner asked you if there was any information that was part of the auto-backups, and you said no.

Mr. Kevin Costante: The question that came to us was backup tapes for Mr. MacLennan. The normal protocol for backup tapes is that we keep one at the month end, and we keep them for 12 months, and then they're overwritten. The privacy commissioner also asked us for backup tapes for the period up until December 31, 2011. She was asking these questions in April, May 2013. Staff responded that there were no backup tapes because, by our protocol, they would have all been overwritten by that point.

Mr. Gilles Bisson: But is it a question—you only offered—

Mr. Kevin Costante: Again, if I can use Mr. Fedeli's words, we didn't look under the hood. When we looked under the hood, we found a backup tape for December 2011 for Mr. Craig MacLennan.

Mr. Gilles Bisson: Well, the first thing is, it seems to me that it's a question of you only offered up the answer

that she asked, but you didn't provide her the information she was looking for, if you follow where I'm going. So you can ask a question. This is like the old Yes, Minister—

Mr. Kevin Costante: I'm not denying—we should have went and verified. I fully acknowledge that we should have went and verified and we didn't. We responded on what our policy was, and we didn't verify. That was our mistake, and that's—

Mr. Gilles Bisson: I'll let Mr. Tabuns pursue that. My last question—I know I said it was the last the time before, but I forgot one. When you said you checked with Mr. Milloy's office, you're talking about Mr. Milloy the minister, or Mr. Milloy the House leader?

Mr. Kevin Costante: I'm sorry?

Mr. Gilles Bisson: You said that you checked with Mr. Milloy's office on the release of documents; you check in with his office.

Mr. Kevin Costante: No. I said that staff for Minister Milloy's office viewed the documents before we released them to the committee.

Mr. Gilles Bisson: And is that "staff" of him as the House leader or as MGS?

Mr. Kevin Costante: I believe it was both.

Mr. Gilles Bisson: Oh. Thank you. That's interesting.

Mr. Peter Tabuns: It is.

Just so I'm clear: The auto-archive setting on the secondary record-keeping, or the vault, does not save everything every day.

Mr. Kevin Costante: I'm going to turn it over to—

Mr. Peter Tabuns: That's fine.

Mr. David Nicholl: Okay. The auto-archiver is actually a feature of Outlook. That's your client on your PC. You, as an individual, can either switch that on or switch that off. We have it off within our environment. No relation to Enterprise Vault; no relation to secondary storage.

Mr. Peter Tabuns: Okay. So how does the Enterprise Vault work? Every email that comes in: Is it automatically stored on the Enterprise Vault?

Mr. David Nicholl: No. Basically, what happens is, emails age. They age over a period of 30 days. On the 31st day, if that email is still in your primary account and it hasn't been deleted, it will drop into the Enterprise Vault. It will leave behind a stub. The primary email account will actually refer to it, but the actual storage of the email is moved on to the secondary storage.

The reason we do that, honestly, is purely from a management perspective, and it's cheaper storage. It's less frequent; you don't go to your older emails as frequently as you do to your emails from a week ago. That's really the only reason.

Mr. Peter Tabuns: So if someone cleared all their emails every day, there would be nothing left to go into the Enterprise Vault. Is that correct?

Mr. David Nicholl: If the person had deleted from their primary email account, and then they had emptied their deleted folder—because, don't forget, you've got to delete both from the primary account—it goes into the

deleted folder—and then you’ve got to go and actually delete it from the deleted folder. That can happen in a number of ways: You can delete it individually yourself; you can empty the folder, the way you empty any folder; or you can actually set up your Outlook that, as you log off, it actually empties out that deleted folder as well.

There are a few ways of doing it, but if it’s deleted, it will not appear in the vault. If it’s left inside the deleted folder, for instance—so if you do a single delete, it goes into the folder—it will age in that folder. After 30 days, the folder itself will actually—you’ll see it within the Enterprise Vault. It will have deleted folders—emails inside there. So all the folders age as well.

Mr. Gilles Bisson: So the deleted folders are backed up.

Mr. Peter Tabuns: Yes. So the deleted folders—

Mr. David Nicholl: Don’t think of Enterprise Vault and backup in the same breath.

Mr. Gilles Bisson: No, no. I understand, but—

Mr. Peter Tabuns: But just to understand, then, someone who came here and said, “I delete everything every day”: Unless they went and cleared out their recycle folder, that recycle folder would automatically just have those put into the Enterprise Vault?

Mr. David Nicholl: Yes. If they haven’t emptied their folder, it’ll pop into the vault.

Mr. Peter Tabuns: Okay.

Mr. David Nicholl: Can I just complicate things just one tiny, small bit more?

Mr. Peter Tabuns: Why not?

Mr. Gilles Bisson: You wouldn’t be an IT person without that.

Mr. Peter Tabuns: You’re under oath. Go ahead.

Mr. David Nicholl: Again, I want to tell you everything that we know now, because we’ve learned a lot over the last month, obviously.

We’ve also come across emails that are in a folder called the synchronization folder. Basically, what Microsoft does is, you’ve got your Outlook client, which is what you’re on your PC with. You’ve got Microsoft exchange server; over on the far side is the server. If Microsoft has a problem in communicating between those two pieces—and we’re talking milliseconds here; it’s not like you see it. If there’s any kind of problem between the two, Microsoft actually dumps it into the synchronization folder.

There are two or three different ones. Some of them are more like a log file. But there is one called conflicts, and conflicts exists when it has a conflict actually in connecting between Outlook on your PC and exchange at the back end. It actually takes a copy of the email and pops it in there. Again, within a millisecond, it’s sent and it’s gone, but the copy is actually still sitting inside the synchronization folder.

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Mr. Peter Tabuns: Have you, in fact, looked at those synchronization folders to see if the emails we’re interested in are stored there?

Mr. David Nicholl: Yes, we have. By e-discovery, we have actually searched all folders.

If you’re on Outlook yourself, you wouldn’t go and look there. It’s a system-generated folder. It’s in effect a system-generated email. It is not the email at all; it’s a copy that the system has taken, put into this folder and then sent off, as and when it can actually get that conflict resolved.

Mr. Peter Tabuns: Did the Enterprise Vault have all of the emails from Mr. MacLennan from his time as chief of staff?

Mr. Kevin Costante: The ones that we released here?

Mr. Peter Tabuns: Yes.

Mr. Kevin Costante: I think we’d have to go back and look and find out what folders they had come from. We can undertake to do that.

Mr. Peter Tabuns: If that would be noted, Mr. Chair, as an undertaking to come back and let us know—

Mr. Kevin Costante: Which folders?

Mr. Peter Tabuns: Yes.

Mr. Kevin Costante: And, sorry, do you want to know every email and every folder, or just how many in each folder? I just need to be specific.

Mr. Peter Tabuns: I would like to know if you captured the full period of his tenure as chief of staff for the Minister of Energy. My interest, Deputy Minister, is, did we get a search on the full range of his emails in his time as chief of staff or only a search on part? Because you searched through the Enterprise Vault with the keywords, correct?

Mr. Kevin Costante: That’s correct.

Mr. Peter Tabuns: Was it just one year that was covered, or two years, or three or four? Because he was chief of staff—

Mr. Kevin Costante: We can clarify that for you as well—

Mr. Peter Tabuns: If you could clarify—

Mr. Kevin Costante: —the time period of the emails and the location within each folder.

Mr. Peter Tabuns: How much email was in Mr. MacLennan’s account when it was deleted?

Mr. Kevin Costante: The—

Mr. Peter Tabuns: The primary.

Mr. Kevin Costante: Sorry; I don’t know that. We’ll undertake to—

Mr. Peter Tabuns: Can I ask you to give us an undertaking on that?

Mr. Kevin Costante: I’m assuming you want both the responsive, which we released, and the non-responsive.

Mr. Peter Tabuns: Well, I’d like to know the scale. Ultimately, all I care about are the ones that are responsive, but I want to know that you have checked through the full time period that he was chief of staff for responsive.

Can you tell when his emails were deleted?

Mr. David Nicholl: The only way we’re going to be able to tell when an email was deleted—and this is beyond our capability, by the way, but people can do it—is we’d have to go through the series of backup tapes and

compare month to month, and if something has dropped, then you'll know right in there. We'll have to give that to someone else to do because it's not something that we would do, but it is possible to actually do it that way. You wouldn't get a day; you'd get a month. But you actually could do it month by month to say when that email was deleted.

Mr. Peter Tabuns: Okay. Are there any other orphan vaults that you've come across in your work?

Mr. Kevin Costante: Yes, and I think in my letter of the second disclosure package, on page 2, up at the top, we found other orphan vaults for Jamison Steeve from his period at the Ministry of Health and Long-Term Care; Craig MacLennan from his period at the Ministry of Aboriginal Affairs and the former Ministry of Public Infrastructure Renewal; Mr. Brad Duguid from his time at the Ministry of Aboriginal Affairs and the Ministry of Municipal Affairs and Housing; and Mr. Chris Bentley from his period at the Ministry of Training, Colleges and Universities. We indicated, though, that while they don't appear to be relevant, we are going to search those, and again, we hope to report them in the next package.

Mr. Peter Tabuns: Okay. So you didn't find orphan vaults for the people we're interested in in the periods we're interested in. What you just listed to me were—

Mr. Kevin Costante: My understanding is that was the period that they were in. It's one of those cases where I want to go and verify, sir.

Mr. Peter Tabuns: That would be fine.

Mr. Kevin Costante: Yes.

Mr. Peter Tabuns: What was really shocking me and, I think, the Information and Privacy Commissioner was that there seemed to be a very different standard of search for her request and our request as a committee. As an officer of the Legislature, her request should have had the same weight as this committee's in terms of the scale and thoroughness of search. Why wasn't it the same?

Mr. Kevin Costante: Again, I think the staff responded on the basis of policy, and based on policy, there shouldn't have been records. There were records, and when we then looked into the system, as a result of the motion from this committee, we found them. Obviously, that was a mistake on our part. We should have verified, not just responded on the basis of what our policy was. That's, again, why we have apologized to the privacy commissioner. We should have done more.

Mr. Peter Tabuns: So why did it twig on you that you had to go beyond policy when this committee asked?

Mr. Kevin Costante: Because the committee asked for a number of individuals in your—the only thing you could ask us for was an electronic search because we weren't involved in the gas plants; you weren't asking for us—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Kevin Costante: Our only approach could be an electronic search.

Mr. Peter Tabuns: All right. In terms of the cost of producing emails from backup tapes that were found, how was the costing done?

Mr. David Nicholl: It's very much straight line math. We have around 3,200 tapes. We ran a quick test to see how long it will take us to actually go through the process of getting the tapes down from Iron Mountain, restoring, loading and going through the process. It came out to somewhere between two and four hours because it's completely dependent on how much stuff is on there. We went to our vendor of record, we pulled a price off for a mid-level person who does that kind of stuff, we took it down to an hourly basis, and it came to somewhere around \$500 an hour—or two—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

Mr. Peter Tabuns: Okay. That's clear. Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. Just before we get into it, I just have a couple of things that need a little clarification on the record. I notice my colleague Mr. Fedeli may have lost track of the forest for the trees in his suggestion about the numbers of emails. I'd just like to remind the committee that the initial request for documents came from the Minister of Energy, the Ministry of Energy and the OPA and did not include the numbers of documents subsequently requested. I'm sure the member will remember that the next time the—

Mr. Victor Fedeli: Point of order, Mr. Chair.

Mr. Bob Delaney: No, you can do that later. The other thing is—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, point of order.

Mr. Victor Fedeli: Thank you for recognizing my point of order. The point I made, Chair, is that the original 36,000 that were delivered—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, clarifications are welcome afterward.

Mr. Victor Fedeli: Certainly we're told by the Liberal cabinet that you have—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, please continue.

Mr. Bob Delaney: To put a quote in here from the Information and Privacy Commissioner herself, she said recently, and I'll use her words, "Our position has consistently been that a system designed to give ministers and senior officials a 'heads up' about the disclosure of potentially controversial" emails "is acceptable. These processes or systems are designed to ensure the timely notice and communication of relevant details of the request and the related records, in order to assist the minister or senior officials when responding to questions in the Legislative Assembly or from the media or members of the public."

I think that also is important.

But to come back to it here, I have a clarification question to ask you. We've done a little bit of discussion here around the Enterprise Vaults. The Premier's office doesn't have Enterprise Vaults; am I correct?

Mr. Kevin Costante: That is correct. We actually have three protocols around—sorry, I should let Mr.

Nicholl respond to this. But we have a different treatment for the Premier's office.

Mr. David Nicholl: Yes, you're right; the Premier's office does not have Enterprise Vaults.

Mr. Bob Delaney: Okay. Are the Premier's office and the Cabinet Office on the same system as the ministries?

Mr. David Nicholl: Yes, they are.

Mr. Bob Delaney: Okay. Let's move on, then, to a few questions about record-keeping. There has been a bit of debate about what records should and shouldn't be kept. Let's see if we can put a little bit of clarity around it.

We know that the Archives and Recordkeeping Act explains transitory records are not required to be retained. The Common Records Series defines these transitory records as follows: "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

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When we asked Secretary Wallace about his personal experience with transitory records he told us, in his words, "from the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant."

Does that seem to be an accurate characterization of "transitory records," from your experience working in government?

Mr. Kevin Costante: Yes, it is. I think the other piece of guidance that is around transitory records is that they're not required to meet legal obligations to document government decision-making.

Mr. Bob Delaney: Okay. Give me an example of that.

Mr. Kevin Costante: Somebody says, "Have you seen the updated briefing note?" and I respond, "Yes." There's really no content in that.

Mr. Bob Delaney: Okay, so in other words, if somebody had said, "Have you seen the updated"—

Mr. Kevin Costante: If I were to send them back comments on the briefing note, if it's a policy-related briefing note, then I think that's more than a transitory document.

Mr. Bob Delaney: Okay. So if somebody says, "Have you seen the updated"—fill in the blanks with one of the search terms—"briefing note?" and somebody sends one back and says, "Yes, I have," or, "No, I haven't; we'll discuss," that's a transitory record.

Mr. Kevin Costante: Sorry, can you repeat that?

Mr. Bob Delaney: Okay. Someone sends an email, for example, to one of you or to someone in the ministry, and says, "Have you seen the updated," and you fill in any of the search terms, "briefing note," or memo or

whatever, and you say, "Yes, I've seen it; we'll discuss." That's a transitory record; correct?

Mr. Kevin Costante: I think some of these judgments are subjective.

Mr. Bob Delaney: I understand.

Mr. Kevin Costante: I think in terms of our search, the electronic search, if it mentioned the Mississauga and Oakville gas plants in any manner, we included it as a responsive record.

Mr. Bob Delaney: Well, really what I'm trying to lead to here is that it would be misleading to state that every piece of paper, every iota of electronic correspondence needs to be kept. Would you agree that that's not the purpose of either freedom-of-information legislation or the archive legislation? Is that correct?

Mr. Kevin Costante: Yes, and I think the act is very clear about what needs to be kept and what doesn't have to be kept. Transitory records, personal records, political records and constituency records don't have to be kept under the Archives and Recordkeeping Act.

Mr. Bob Delaney: So if those transitory records, political records, personal correspondence are deleted, that is not a violation of any of the acts. Correct?

Mr. Kevin Costante: Correct.

Mr. Bob Delaney: Good. But then there's also an important designation for private records. On page 9 of the Information and Privacy Commissioner's report she outlines two general categories of records in the office of a minister or the Premier and they are (1) public records and (2) personal, political and constituency records. On page 10 it goes on to explain that ministers and the Premier's personal, political and constituency records are those generated by ministers in their capacity as members of the Legislature and as private citizens.

Could you explain for us a bit more about these personal and political records and why they are not required under the Archives and Recordkeeping Act to be retained?

Mr. Kevin Costante: I think the purpose of the Archives and Recordkeeping Act is to maintain records of archival value and also maintain records that deal with significant issues of public policy and direction. These were specifically exempt. Some political figures, when they leave office, even though they didn't have to provide these, can voluntarily provide their personal and political and—I don't know this for certain, but I guess even their constituency offices to the archives for future generations to benefit from.

Mr. Bob Delaney: Right. Well, Chair, I'll pass this to the Clerk for photocopying and distribution. It's not material to what we're discussing today, but it serves to illuminate. This is from the archives, and it's entitled "The Fine Art of Destruction: Weeding Out Transitory Records." It says, "I know I need to keep some things. But the rest of the stuff..." I'll leave this with the Clerk for copying and distribution.

Let's go back to email accounts. Let's talk about what happens to a person's email account when they leave government. The committee has learned that the practice

of deleting accounts after a staff member leaves the government, on both the political and the public service side, is a common administrative exercise. We know how to do that, right?

Mr. Kevin Costante: Correct.

Mr. Bob Delaney: Secretary Wallace, when he was here, said, and I'll use his words, "The wrapping up of email accounts would be a perfectly routine business. It's done in all businesses. There's no expectation in the archives act or anyplace else that records be kept forever in digital form, backed up in that approach. So it is routine that as individuals leave the Office of the Premier or any place of employment within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down."

Just to confirm, would you add some clarity to the deletion of accounts as standard government-wide practice?

Mr. Kevin Costante: It is standard government-wide practice. We are a large employer, and we have thousands of people leave each year. The practice is to delete their accounts once they have kept any relevant public documents that they should keep under the archives and records retention act. That is our standard practice. I believe that, in the technical briefing that we provided to the committee, we went through the steps of that deletion process.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. Mr. Tabuns talked about the fact that Dr. Cavoukian's request was not handled the same way as this committee's requests in general, and you answered with, "Staff responded on the basis of policy." Would it not have been policy to go through the Enterprise archive in order to satisfy the previous requests, or the request by Dr. Cavoukian?

Mr. Kevin Costante: I don't think we had previous requests.

Mr. Victor Fedeli: The request by Dr. Cavoukian. When you responded in June to Dr. Cavoukian, you did not look in the Enterprise Vault. My question was, is that not part of a normal thing that you would look through to satisfy this?

Mr. Kevin Costante: So when a ministry gets a request—a motion—they would look through the primary and secondary account and provide that information to the committee. If his account had been deleted, and the primary had been deleted, there would be no way—and I'll ask Mr. Nicholl to confirm this—for the ministry to know that that orphaned Enterprise Vault is still sitting on our system somewhere.

Interjection.

Mr. Kevin Costante: I hear him saying that's correct. They would not know that, so only when we went in and searched our system would it have been found. I think that is—

Mr. Victor Fedeli: The question was, isn't that your normal—

Mr. Kevin Costante: If your question is why we didn't do that search when Dr. Cavoukian asked, I think

there was an overdependence on policy. Absolutely, sir, we should have gone in and verified, and we did not do that.

Mr. Victor Fedeli: Would you normally do that for other searches?

Mr. Kevin Costante: This is not normal. This is the first committee motion. For other searches, are you talking about FOI searches or in—

Mr. Victor Fedeli: No, just in general. If we asked another ministry to give us all their documents, would they have done an Enterprise Vault search?

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Mr. Kevin Costante: They would have looked at their primary and their Enterprise. Again, if it had been deleted before you asked, and the primary account was deleted but the secondary vault was still there, they would have no way of knowing that, sir. Only we would know that.

Mr. Victor Fedeli: Only MGS.

Mr. Kevin Costante: Only MGS would know that.

Mr. Victor Fedeli: Well, let me hand this out, then. Clerk?

Back on April 29, there were emails, which MGS was copied on. "Your Enterprise Vault files have been successfully restored." There are about five pages: "To assist with searches in Enterprise Vault"—it's a very detailed search, back in April, and MGS is copied. Ron Huxter from MGS is copied on one; Richard Lee is copied on another. They freely talk about searching. It's a very detailed list on how to search an Enterprise Vault; it's very detailed here. They seem to have spent a lot of time, copied a lot of people, gone into very, very specific—"Go into the Enterprise Vault and search...." "You can restore all items ... from the vault...." They go on and on.

Why would you not have followed any of these instructions—you know the attention that is being brought on this gas plant scandal—when the very privacy commissioner is doing a search?

Mr. Kevin Costante: There is a difference between an Enterprise Vault that is live, that is searchable, and that's what this is about—I haven't read the whole document, but—

Mr. Victor Fedeli: So did you search that live Enterprise Vault—

Mr. Kevin Costante: Yes.

Mr. Victor Fedeli: —when it comes to—

Mr. Kevin Costante: If an FOI request came to me personally on a topic, I would search my primary and the secondary, yes, because they both show up on your screen, sir, when you open up your email account. They're both there, so you search both of them.

But there is a difference between these orphaned Enterprise Vaults. They have been deleted. The entryway to those orphaned vaults has been deleted. So they sit on the system, but there's no way for the ministry who is doing the search to get to them—

Mr. Victor Fedeli: So this has to come from you?

Mr. Kevin Costante: —and I believe the expert this morning also testified to that effect.

Mr. Victor Fedeli: The difference between the backup tapes and the Enterprise Vault: Was that explained to Dr. Cavoukian?

Mr. Kevin Costante: I believe we did not talk to Dr. Cavoukian about the Enterprise Vault. There was discussion with her about the backup tapes, and you'll see that in her report.

Mr. Victor Fedeli: I wanted to ask you a question about "transitory." Is a five-page discussion on approaching a Speaker considered transitory—five pages of emails?

Mr. Kevin Costante: I don't think I can comment on that.

Mr. Victor Fedeli: Why couldn't you comment on that? It's a topic. It doesn't seem to be a lighthearted "Do you want to go for coffee?" email. Would that be considered transitory?

Mr. Kevin Costante: I guess it would have to meet the terms that the committee talked about: It was about gas plants, it was in the time period and it was one of the individuals—

Mr. Victor Fedeli: If it said here, "Controversy over the gas plants," "Manage the gas plant issue," five pages of emails back and forth with people, would that—

Mr. Kevin Costante: It sounds like something that is not transitory.

Mr. Victor Fedeli: It sounds like something that is not transitory. Good to know. Thank you.

We've got another set of emails that talk about gas plants—"concerning the Mississauga and Oakville power plants." It's a page-and-a-bit email between people. Would that be something that would be considered transitory?

Mr. Kevin Costante: It's hard for me, Mr. Fedeli, to comment on something I haven't seen.

Mr. Victor Fedeli: "We have just received the attached letter from Jim Wilson regarding the release of documents concerning the Mississauga and Oakville power plants."

Mr. Kevin Costante: Could I—

Mr. Victor Fedeli: And we go back and forth. Would that be something that is transitory—"I'll meet you for coffee"—or is this a transitory document? You've been able to answer comments about transitory before, so I'm hoping you can tell me whether you would consider a page and a bit—

Mr. Kevin Costante: Could I see the documents, please?

Mr. Victor Fedeli: Liberal gas plant scandal document 8—

Mr. Kevin Costante: You're asking me to comment on something I haven't seen.

Mr. Victor Fedeli: I don't have a copy of it here. We had it in the earlier testimony. I'll need it back, if you don't mind.

Mr. Kevin Costante: Yes.

Mr. Victor Fedeli: It's the back page, just where the first email started—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, if you might allow the Clerk to do this—

Mr. Victor Fedeli: Oh, I didn't know you had one.

Interjection.

Mr. Victor Fedeli: Thanks. I'll give you a copy to keep, then, after.

Is this something, in your opinion, that you might consider transitory, or is this more like the kind of email that maybe we should have had in the committee? It's people talking amongst themselves about—I'll let you think on that, and then I'm going to ask another question here.

How's my time?

The Chair (Mr. Shafiq Qaadri): Two minutes.

Mr. Victor Fedeli: Two minutes.

This is page 3 of Dr. Cavoukian's report: "Upon receipt of this complaint, my office immediately launched an investigation.... During our interview with the secretary, he stated that, in January 2013, Mr. David Livingston, the former Premier's chief of staff (Livingston) approached him, seeking administrative computer system passwords and information about how to permanently delete emails and other electronic documents." What's that all about?

Mr. Kevin Costante: I'm going to ask Mr. Nicholl to—

Mr. Victor Fedeli: You've got about a minute.

Mr. Kevin Costante: Be quick.

Mr. Victor Fedeli: Please.

Mr. David Nicholl: Yes, I will. Basically, there was a request from the Premier's office to get admin rights to clean up hard drives before they pass those machines on to new staff coming in.

Mr. Victor Fedeli: So this is permanently deleting emails and other electronic documents. What are "other electronic documents"?

Mr. David Nicholl: No. There's no connection between admin rights and email at all.

Mr. Victor Fedeli: I'm just reading from here.

Mr. David Nicholl: Yes. There's no connection between an admin right and an email account. Admin rights just give you access to your own C:\ drive, your hard drive on your own local PC. The only connection to emails could be if you had actually saved emails to a folder in your own C:\ drive.

Mr. Victor Fedeli: And what are "other electronic documents"?

Mr. David Nicholl: If you had, say, created your own Word document and it was on your C:\ drive. But you can delete that yourself anyway. You don't need an admin right to do that.

Mr. Victor Fedeli: What would he need to approach the secretary of cabinet for administrative computer system passwords for?

Mr. David Nicholl: Why would he?

Mr. Victor Fedeli: What would he need those for?

Mr. David Nicholl: If he wanted to basically restore the PC to its original form.

Mr. Victor Fedeli: So, when he was deleting emails, would they end up in this Enterprise server?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Tabuns.

Mr. Peter Tabuns: Gentlemen—and I will decide between you who answers—at any point, did one of you meet with Mr. Livingston about his interest in deleting either the contents of hard drives or deleting emails when he was chief of staff to the Premier?

Mr. David Nicholl: I had a conversation the previous August, August 2012, where Mr. Livingston wanted to understand the process for deleting email accounts—not records, but accounts. The Premier's office had a concern that when people left and then came back, their email account was still going. They were concerned that emails would be coming in and no one was checking. That was basically a process issue passed off to Cabinet Office to resolve. It was basically just a matter of getting the right forms filled in and getting email accounts deleted at the proper time.

The January conversation was, just as Mr. Fedeli said, based around issuing an admin right to clean up PCs in preparation for a new office. The admin right doesn't actually do anything with the email accounts. He again reiterated the issue with email accounts being left open when people leave and how important it was that there was a process to make sure that emails didn't come in and lie and then didn't get answered or something.

Those were the two occasions.

Mr. Peter Tabuns: Did you meet with him personally on the second occasion?

Mr. David Nicholl: No. Phone. Phone call and email.

Mr. Peter Tabuns: Did you advise of his responsibilities—

Mr. David Nicholl: Yes, I did.

Mr. Peter Tabuns: How did he respond to your advice?

Mr. David Nicholl: He accepted my advice.

Mr. Peter Tabuns: Really? Okay.

According to Mr. Peter Wallace, typically, email accounts are deleted, decommissioned, extinguished, when people leave. But I gather this past year, when there was a transition, in fact, email accounts were saved for a variety of key people in the Premier's office. Can you tell us the basis for that decision?

Mr. David Nicholl: I believe that the secretary of cabinet made a decision that there was a lot of activity happening, and that it was prudent to hold on to email accounts at that time. That's my understanding.

Mr. Peter Tabuns: And in what form do those accounts exist today?

Mr. David Nicholl: Basically, we keep them. We hide them, in effect, so you can't send emails to them, but they're there. It's hidden in the GAL, where you actually go and look at names. You can't actually go and send emails to it, but the email account still exists. So we can still go and search those email accounts, which is, in fact, what we did for this motion.

Mr. Peter Tabuns: Okay. So you can access them at this point.

Mr. David Nicholl: Yes, we can.

Mr. Peter Tabuns: And I assume that access is fairly closely guarded.

Mr. David Nicholl: Yes, it is.

Mr. Peter Tabuns: All right.

Did you have questions?

Mr. Gilles Bisson: Yes. Just earlier, when I asked you some questions, you had mentioned that Mr. Milloy was involved in the process of how documents are released, that when you had documents that may be commercially sensitive, all that kind of stuff, you dealt with Mr. Milloy. I asked, was that in his role as MGS minister or in his role as House leader, and you said both. Can you explain a little bit what those conversations are about?

Mr. Kevin Costante: I had two conversations with Minister Milloy regarding documents—

Mr. Gilles Bisson: Or his office.

Mr. Kevin Costante: With him, personally.

Mr. Gilles Bisson: Okay, but his office as well.

Mr. Kevin Costante: Let me deal with the minister first.

Mr. Gilles Bisson: Okay.

Mr. Kevin Costante: On July 9, I believe, we informed Minister Milloy that we had found Craig MacLennan's orphaned email account. So that was one occasion, and he asked for an explanation of that. He expressed his disappointment that we were just finding it then. The Wednesday night—sorry, I forget the date—he called me at home, basically to get a further update. Obviously, we had disclosed at that point to the privacy commissioner and the OPP and here. We chattered about the issue.

The normal process, in terms of—

Mr. Gilles Bisson: What was his concern?

Mr. Kevin Costante: Sorry?

Mr. Gilles Bisson: What was his concern? Why would he call you at home—

Mr. Kevin Costante: His concern, I think, was to understand the circumstances. It's very complicated, as you're seeing. We were trying to figure out the circumstances and talk to the various people who had interacted with the privacy commissioner. It took a few days to get clarity, and I believe on Thursday he was leaving on holidays, and he wanted an update as to kind of where it stood at that point. I talked to him for five minutes or so on the phone and gave him an update.

Mr. Gilles Bisson: When it comes to requests for releasing documents from these computer systems, is there anybody—either the minister of MGS and his staff or the House leader—involved in what is released?

Mr. Kevin Costante: I'm sorry; I didn't hear you.

Mr. Gilles Bisson: Is there any involvement in regard to what is released?

Mr. Kevin Costante: No. They get to see them for issues management purposes, just like other things that come out of government. He is the minister responsible

for government services, so his staff get to see it, and they got to see it at the end of the process.

Absolutely all the decisions around what was released, what was responsive, were done by ministry legal counsel. That was also shown to the Wortzman Nickle legal firm—

Mr. Gilles Bisson: So what's the purpose of giving him that information if they're not influencing the release?

Mr. Kevin Costante: So if they get asked questions, they'll be aware of what has been released.

Mr. Gilles Bisson: So it's strictly a briefing and not looking for permission on your end.

Mr. Kevin Costante: That's correct.

Mr. Gilles Bisson: Okay. You've kind of answered—no, you've answered. I'm okay.

Mr. Peter Tabuns: I have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you. The NDP yields its time? Thank you, then.

Thank you for your testimony to this committee, Mr. Costante and Mr. Nicholl, on behalf of our shared Ministry of Government Services. Thank you, gentlemen.

We have some—yes?

Mr. Jim McDonnell: Can we just have a 10-minute adjournment?

The Chair (Mr. Shafiq Qaadri): A 10-minute recess. *The committee recessed from 1434 to 1452.*

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qaadri): Colleagues, I welcome you back into session. We have a couple of motions, some clarifications and some housekeeping issues. There was a mail-out from July 23 with reference to some commercially sensitive info, and our Clerk will just explain that momentarily.

The Clerk pro tem (Mr. Katch Koch): Thank you, Chair. On July 23, the Clerk of the Committee sent out to committee members a package of documents that was received from the ministry. The deputy minister also flagged some of the documents as commercially sensitive, and the practice in this committee has been to ask committee members for direction on how to handle the commercially sensitive information.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, I was on holiday at the time that those communications were sent. I did not have a chance to review them. I would appreciate it if this could be held down one week to our next meeting.

The Chair (Mr. Shafiq Qaadri): Fair enough. Agreeable to the committee members? Done.

Next issue: the July 26 mail-out.

The Clerk pro tem (Mr. Katch Koch): The July 26 mail-out also contains some information that was flagged as confidential by the deputy minister. Again, we need some direction from the committee.

Mr. Peter Tabuns: I would ask the same.

The Chair (Mr. Shafiq Qaadri): Agreed. Done.

Mr. Victor Fedeli: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Fedeli?

Mr. Victor Fedeli: Are these the only two that you're dealing with? We were also given a package by the OPA. What date was that? We're still pending some—

Mr. Jim McDonnell: Sensitive.

Mr. Victor Fedeli: It wasn't sensitive. They called it something different. Do you guys recall the OPA one?

Mr. Peter Tabuns: No, I don't.

Mr. Victor Fedeli: When we table the July 23 and July 26 next week, can we also table that OPA one? If you have any difficulty in finding what we're talking about, make contact with me, but it was very specific from the OPA. They wanted—

The Clerk pro tem (Mr. Katch Koch): The OPA filing?

Mr. Victor Fedeli: There was an OPA file where we had two, where one was public and one was preferred to be not made public.

Mrs. Laura Albanese: I recall something to that regard, but not the details.

Mr. Victor Fedeli: Yes. We need to nail that one down too. There is a third one.

The Chair (Mr. Shafiq Qaadri): That's fine.

Just before we entertain the issue with the motions, there's a matter brought up with regard to tweets and Twitter accounts and so on. If it is felt that any medium such as—what is it, Twitter?—

Mr. Peter Tabuns: Twitter.

The Chair (Mr. Shafiq Qaadri): —is being used to intimidate witnesses, then a formal report, or as part of a formal report, goes from this committee as a complaint to the House, and the Speaker does the ruling, not the Chair. I just table that for your information since that was raised at some point.

We now have two motions before the floor. I offer the floor to Monsieur Bisson.

Mr. Gilles Bisson: I move—

Mr. Victor Fedeli: I have a question.

The Chair (Mr. Shafiq Qaadri): Yes, just a second. Mr. Fedeli?

Mr. Victor Fedeli: Does that also include former MPPs and former cabinet ministers tweeting?

The Chair (Mr. Shafiq Qaadri): I have no idea. In any case, Mr. Bisson?

Mr. Gilles Bisson: I move that the Standing Committee on Justice Policy request that the office of the Deputy Minister of Energy and the secretary of cabinet provide all documents from 2011, 2012 and 2013 relating to guidelines to the minister or ministry staff on the preservation and deletion of electronic records.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments before we move on this motion? Seeing none, all in favour of this motion? All opposed? The motion carries. Is that the extent of the motions today, Mr. Bisson?

Mr. Gilles Bisson: That's my motion.

The Chair (Mr. Shafiq Qaadri): Nothing with reference with Mr. Delaney?

Mr. Gilles Bisson: You would only wish.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, you have the floor.

Mr. Victor Fedeli: Thank you, Chair. I move that the Standing Committee on Justice Policy request from the Ministry of Government Services, Cabinet Office and the Premier's office all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received, by the following email address: homeoffice@liberal.ola.org.

The Chair (Mr. Shafiq Qaadri): All right, the motion is in order. Comments or—yes?

Mr. Bob Delaney: Chair, I have a few things on this one. There is no time frame here. I think Mr. Fedeli might want to amend his motion with regard to a time frame. Secondly, we have been used to our ministries searching email accounts that end with @ontario.ca. Would Mr. Fedeli explain why he thinks that this is relevant or in order or whose email address this is? Like, what's this all about?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli?

Mr. Victor Fedeli: Thank you, Chair. On February 8, 2013, an email was sent to a group of people but copied to homeoffice@liberal.ola.org. One of the topics in here is "the Premier designate's call to add the Oakville gas

plant to the Auditor General's review drove the media cycle" etc. They clearly are discussing gas plant scandal hearings in this email to that address, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Any further comments before we vote?

Mr. Bob Delaney: He has not provided a time range which—to be reasonable, all other such motions have said "between this date and that date."

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli?

Mr. Victor Fedeli: Considering this includes the Oakville gas plant cancellation, which occurred in 2010, let's say 2010 to present, to today.

The Chair (Mr. Shafiq Qaadri): Is that satisfactory, Mr. Delaney?

Mr. Bob Delaney: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): So, those in favour of that time frame amendment? I take it that's in favour. Fine. So now we'll vote on the motion, as amended. Those in favour of the motion, as amended? Those opposed? The motion carries.

Any further business before this committee? Thank you, lady and gentlemen. The committee is adjourned until next week.

The committee adjourned at 1458.

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**Standing Committee on
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 13 August 2013

Mardi 13 août 2013

The committee met at 0901 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du comité de la justice.

I'd like to welcome our presenter. Before doing so—

Mr. Gilles Bisson: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, point of order: The floor is yours.

Mr. Gilles Bisson: I would like to pass on a motion that I'd like to move.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson.

Mr. Gilles Bisson: For the record, I just want to read the following motion: I move that the members of the standing committee on justice—

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, we'd like to just have a look at it, if you don't mind.

You cannot move a motion on a point of order, but—
Interjection.

The Chair (Mr. Shafiq Qaadri): Can he read it?

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes, he can.

The Chair (Mr. Shafiq Qaadri): Okay, please proceed.

Mr. Gilles Bisson: As I was saying, I move that the members of the standing committee on justice be allowed to ask questions related to any and all documents provided to this committee.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. I think we'll likely need to recess on that one.

Mr. Gilles Bisson: Well, just before you recess, just for your consideration: Under the order of the House, this committee was given the ability to request documents that look into the issue related to the gas plants—who made the decisions, how much it cost and all of those things related.

As a result of an order of the committee, documents were provided to this committee, and we want the ability to be able to ask all questions related to the documents that we receive. For example, we have a witness before us today who is cited in some emails in regard to discussions that he had with the Speaker. Those documents were sought and released as a result of the request of this committee. Therefore, under the authority of the House that we got in this committee, those documents were

received, so therefore we want to have the ability to ask questions related to all documents that this committee has received. Otherwise, essentially, the Premier—in my view—is not living up to her word of being transparent and allowing us to be able to do what we have to do in this committee.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. We've received your motion, and the powers that be, which include myself, would require a recess to consider it. So let's take about a 10-minute-or-so recess. Thank you.

The committee recessed from 0903 to 0905.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues, for your patience and indulgence. Thank you, Monsieur Bisson, for the motion that you have presented before the committee. I officially rule that that motion is out of order. Why? Because the motion must apply to the mandate of the committee. For that reason, I would like to read a statement, which is so: I would like to take this opportunity to remind members of the mandate of this committee as outlined by the orders of the House, dated Wednesday, February 20, 2013, and Tuesday, March 5, 2013. This committee is tasked with determining if a prima facie case of privilege with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the estimates committee has occurred, and authorized to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

Perhaps in a more digestible form, I would simply once again alert committee members that we are to look at the products of that ruling and not the process by which it was reached.

Before I offer the floor to you, Mr. Bisson, I'd like to invite legal counsel, Mr. Sibenik, to also comment.

Mr. Peter Sibenik: I think it's important for the committee to be cognizant of the fact that the committee must stay within its mandate. There were two orders of reference, as the Chair indicated.

There are other procedural opportunities for the line of questioning sought to be done to be effected, and that would be in the House. There is standing order 21, in which members provide notice to the Speaker and pursue a line of inquiry dealing with a matter of privilege—that's one way; oral questions; there are motions that could be tabled. These would still have to be in order, of

course, but there are other procedural opportunities for members to pursue the matter of the involvement of the Speaker or who approached the Speaker.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sibenik. The floor is now open for comments. Monsieur Bisson.

Mr. Gilles Bisson: I've got two points. First of all, the terms of reference of this committee were pretty clear. It was given a very wide mandate. In the words of Mr. Milloy, if you go back and look at the order and you take a look at what was discussed in the House, this committee would have the authority to—

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson, I appreciate what you're saying. I'll just re-inform you that the matter has now been ruled upon, so the discussion is essentially concluded. If you do need to pursue this, there are other forums for which to do so.

Mr. Gilles Bisson: And I'm choosing not to exercise that other forum at this time, to be very clear.

The Chair (Mr. Shafiq Qaadri): The floor is yours, Mr. Bisson.

Mr. Gilles Bisson: Just for the record, I want to say that it was fairly clear these documents were received. Why? Because this committee requested them. It only stands to reason that documents requested by this committee—we should be allowed to ask questions to those particular documents. The terms of reference that were given to this committee were given a very wide mandate to look into all matters related to—and I think that this particular issue and this particular episode with Mr. Guy, Ms. Miller and Mr. Gene is to that point.

The other thing I just want to conclude on: The Premier was quite categorical. When I listened to her on the by-election night, she said she would not have done things the way that Mr. McGuinty had done. She wanted to be open, transparent and allow the committee to ask all the questions to shed the light on what happened here. It seems to me you'd be well advised, as a government, to lead by the example that your Premier has given and allow these questions to be asked about documents that this particular committee requested.

The Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. We shall all aspire to that goal.

Are there any further comments? Mr. Delaney, and then to the PC side.

Mr. Bob Delaney: Chair, I take exception to the comments of my colleague Mr. Bisson. This is not about the Premier; this is about a ruling by the Chair and our ability as a committee to stay within our mandate given to us by the House. I would ask that the Chair, in administering this committee, be firm, consistent and fair in enforcing the ruling that the Chair has just read.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Further comments? Monsieur Yakabuski and then Mr. Fedeli.

Mr. John Yakabuski: Thank you very much, Mr. Chair. I appreciate your ruling. I heard you very clearly saying that we must focus on the products, not the process. Yet I've been sitting on this committee for months

at this point. We were given the broadest possible mandate, as Mr. Bisson has indicated, not only by the House leader, Mr. Milloy, but the Premier, in her words, as well, because she continually at least said, "We're going to do everything we can" to get to the truth, the whole truth and nothing but the truth.

0910

If this is the mandate, all of a sudden we've narrowed the mandate of this committee because of a specific revelation of actions of unelected political operatives. The unelected political operatives took some actions that, quite frankly, I think the people of Ontario will find reprehensible and possibly illegal. And all of a sudden the mandate of this committee has shifted because, time after time, witnesses before this committee have been asked innocuous, ridiculous questions by the government side that have absolutely nothing to do with the cancellation of the gas plants, absolutely nothing to do with any email trail or records that have been destroyed or deleted, nothing to do with anything but furthering the political goal of the government. I'm talking about, specifically, opposition MPPs, the leader of the opposition—questions that had absolutely nothing to do with the mandate, and this committee allowed every one of them to be asked.

So if the committee is going to change its mandate midstream, we need a better explanation than simply all of a sudden that line of questioning is out of order. The people of Ontario want the truth. The Premier's words are worthy: Let's get to the truth. The people of Ontario want the truth. They do not want this committee to be handcuffed to the point where our mandate becomes so narrow that we cannot ask the questions of people like Mr. Guy who attempted to interfere with the highest officer in this Legislature.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. Mr. Fedeli?

Mr. Victor Fedeli: Thank you very much, Chair. I'll only add that, when we began looking into this gas plant cancellation scandal—I have said this many times in this room—the cover-up of the scandal has gotten bigger than the original sin, if you will. This is another example of how deep this cover-up has gone.

For us not to be able to question witnesses last week, this week and going forward about their role in the intimidation of the Speaker, which was just one more method—a large method, albeit—to cover up the hearings that we're having, I think is absolutely egregious, that you rule that way. I think it's unparliamentary that we cannot ask questions of a witness. We have their emails. We know what they said. We know what their intent was. It's not, "I wonder if they did it." They did it. They talk about it back and forth with each other. We now have those emails that prove to us the depths that they would go to cover up this crime.

I believe that we have every right today to ask questions of the witness who's sitting right here.

The Chair (Mr. Shafiq Qaadri): I appreciate the sentiments expressed by all members. I once again call their attention to the actual mandate in writing, which I

hope is before each and every one of you. The ruling continues to stand—

Mr. Rob Leone: Chair? I'd like to comment.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Leone?

Mr. Rob Leone: Chair, we asked in the estimates committee on May 16, 2012, how much these cancellations cost, where in the budget they are located, and we sought to move for the release of documents. That's where this all started. And subsequent to that, because we couldn't get those answers in estimates committee, we had to bring those questions back to the House. A point of privilege was raised by myself, a motion was tabled by myself, and things were set in motion.

But the reality, Chair, is this: We were prevented from analyzing and discussing these documents simply because of the process involved throughout what we've uncovered with these emails. The decision was made; a motion was tabled; documents were released. Legal action was threatened to members of the opposition. The Speaker was threatened, again, by what was desired. Prorogation ensued. This prevented us from actually exposing and talking about the very documents that we sought to look at in the estimates committee.

So at the end of the day, it's very much in line with what we are doing in this committee: talking about the documents that should have been disclosed. The reality is, the failure to produce those documents, the failure to answer the simple question of how much these cancellations cost and where in the budgets they are found, is why we started to expand the investigation. We weren't getting the answers that we wanted. That's why we're here. They prorogued, and we had to come back in February to do the same thing over again.

I would suggest that this is in line with what we started in the estimates committee. We're looking at the release of documents, the documents that we didn't get and the answers we still don't have in terms of what these costs are. This is totally in line with what has happened—why we're still here today, in August 2013, trying to find answers to questions we asked in May 2012. For that purpose, Chair, I think this motion is totally in order and that we should be able to ask questions of this witness and other witnesses who come before us.

The Chair (Mr. Shafiq Qaadri): I appreciate your sentiments. The ruling continues to stand.

Mr. Tabuns?

Mr. Peter Tabuns: Mr. Chair, many people have made very solid arguments on this. The interwoven nature of the decision and the documents is one that you cannot ignore.

This whole inquiry is about decisions that were made and information that had to be provided to the Legislature through this committee. Apparently, an attempt was made to limit that information by going to the Speaker to have him change his ruling. That is entirely within our purview to consider. If we had the Information and Privacy Commissioner here talking about the deletion of emails because, in fact, records weren't available, is it not just as relevant that someone who tried to ensure that

no records at all came forward—is their testimony not equally relevant?

I don't think you can allow, for instance, the Leader of the Opposition to be questioned by the Liberals—someone who had nothing to do with the decision to cancel the gas plant—and then say in another case that it's out of order because it's not in the terms of reference. Frankly, it is within our terms of reference if—and we believe that this is the case—there was an attempt made to cover up the realities of these decisions. Then, this is all of one piece, and you need to allow us to consider those questions and put those questions to witnesses that arise from the documents we've been provided with.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

Mr. Arnott?

Mr. Ted Arnott: Thank you, Mr. Chair. I don't wish to challenge your ruling, and I respect your role as Chair in terms of making your ruling, but I think that if this process is to come to a meaningful conclusion, we need to be able to ask questions in this committee.

In the explanation of the ruling, it was indicated that standing order 21 allows for other opportunities for members of the Legislature to raise issues in the Legislature. Of course, as we know, the Legislature is not currently in session and is not currently scheduled to sit until September 9, so those opportunities don't exist for at least almost another month.

You indicated in your previous ruling last week, and in the follow-up today, that it's the process leading to the decision by the Speaker that is not supposed to be subject to questions, but we certainly have questions with respect to what happened after the Speaker made his *prima facie* finding of privilege with respect to the objections that were raised by the member for Cambridge. Certainly, I would suggest and respectfully submit that those questions should be allowed. We do have a witness today who can shed light on that, and we should be given that opportunity to raise those issues with him.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson?

Mr. Gilles Bisson: The very last point that I want to make is: What this committee is all about is determining who refused to release the documents to the estimates committee when it was asked. We all know—just for people just watching for the first time—that a committee has a right to ask for papers, people or things to appear before a committee. We have that right, and as per the Speaker's ruling, it's an unfettered right of the committee.

It seems to me that the Speaker had already made his decision by the time these emails were sent. The emails that were sent by Ms. Miller, Mr. Guy and Mr. Gene—the exchange between them—happened after the decision. It's clear to me that the decision had been made. He had found a *prima facie* case of contempt, and the matter at hand was, "How are we going to release these documents?" After the government got caught with its hand in the cookie jar by not allowing those documents to be released and being found in a *prima facie* case of con-

tempt, the government continued to try to stymie the release of the papers.

Those are the questions that I want to ask Mr. Guy. I don't want to ask about the ruling on the prima facie case of contempt. I want to ask because I believe that the purpose of the meetings was to figure out a way to slow down and to not allow certain documents to be released to the committee. Certainly that's what they were trying to do, from what I can see from within the emails and what had happened.

0920

It's a case of: The government got caught the first time. They were found in a prima facie case of contempt, and then they continued to try to find a way not to release the documents. Because if you remember, what the Speaker had said was, "I find that there's a prima facie case of contempt. I ask the House leaders at this point to figure out how we're going to release those documents and in which way." That was the only matter left at hand. There was an exchange of emails between these three individuals after the decision of a prima facie case. The only thing they could have been trying to influence him on—because he had already made a decision of the prima facie case of contempt; he wasn't about to change his mind on that—was: How would those documents be released? That's why I think we have the right to ask these questions.

The central crux of this committee is: Why did the government refuse to release the documents to the estimates committee? That's what this committee is all about at the crux of the whole thing, as per Mr. Leone's motion.

What I want to find out: Why were these individuals in the Premier's office and individuals within the Liberal Party trying to influence the Speaker on the release of the documents, not on the decision on the prima facie case of contempt?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson.

Mr. Gilles Bisson: For that reason, we should be allowed to ask those questions.

The Chair (Mr. Shafiq Qaadri): Thank you.

Mr. Gilles Bisson: If not, this flies in the face of what the Premier had said on election night about being transparent.

The Chair (Mr. Shafiq Qaadri): Thank you. So, to conclude—

Mr. Steven Del Duca: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Del Duca.

Mr. Steven Del Duca: Thanks, Mr. Chair. I just want to make sure that I say a couple of things really quickly, having listened to all six members on the other side make their comments over the last couple of minutes. I think that it's unfortunate that, in some cases, the comments that we heard so far this morning seem to call into question your role, your authority, suggesting that somehow that what you've done so far and the statement that you made last week, and also the statement that you made this morning and the comments that we heard from the legal

clerk, are part of some sort of larger game that's being orchestrated. I think it's a really unfortunate attempt on the part of the opposition to try and muddy the waters that way, and I'd prefer it if you would clarify again for us exactly where this comes from.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca.

To conclude, the motion received from Mr. Bisson has been ruled out of order. Statements with reference to both the mandate as well as the reasoning behind it, such as it is, have been provided to you. I think we're on quite firm ground with reference to parliamentary procedure. As Mr. Fedeli spoke, the legal counsel has ruled on it, and I will attempt to assure you both in a personal and parliamentary capacity that the ruling that I am offering to you—despite its characterization either here at the committee or elsewhere—is not arbitrary and it's not from other motives.

The discussion now is closed on this particular issue. I would also like to say that, again, following parliamentary procedure, should there be any other objection or hesitations etc., then I would invite you, respectfully, to please communicate to the Speaker directly in writing with reference to this ruling and any procedures going forward.

Mr. Gilles Bisson: Chair?

The Chair (Mr. Shafiq Qaadri): Is it, Mr. Bisson, truly a different issue?

Mr. Gilles Bisson: As per the rules require, I'm just putting you on notice that we will be, at one point, dealing with this matter before you and the Speaker. I'm telling you now, because that is not on. This committee has the right to ask questions about this particular issue, and as I said, it has nothing to do with the prima facie case of contempt; it has everything to do with about the release of documents. I'm putting you on notice.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. We accept your notification.

If there are no further issues, I would now invite our next presenter.

MR. DON GUY

The Chair (Mr. Shafiq Qaadri): Mr. Guy, welcome. We look forward to your presentation. I would invite you to please be sworn in by our able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Don Guy: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Guy. You have five minutes, as you know very well, to make your opening remarks. Please begin now.

Mr. Don Guy: Mr. Chair, before I start, is the point of order that Mr. Bisson read going to be on the record and in Hansard?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Guy, although it's not really your role to be asking questions at this time—

Mr. Don Guy: The reason I raise it is, he made a false allegation about me. He said I had conversations with the Speaker. That's not accurate; I had no conversations or communication with the Speaker.

The Chair (Mr. Shafiq Qaadri): Your time is running, Mr. Guy. Please go ahead.

Mr. Don Guy: Thank you for inviting me here today and for your patience while I was working—

Mr. Gilles Bisson: For the record, Chair. What I said was, you were part of a group of people—

Mr. Don Guy: No, Mr. Bisson, you made a false allegation about me.

Mr. Gilles Bisson: —that tried to influence the Speaker. Like usual, you're trying to be the bully, sir, and I'm not going to accept that.

Mr. Don Guy: You made a false allegation about me—

The Chair (Mr. Shafiq Qaadri): Gentlemen, may I respectfully—

Mr. Gilles Bisson: Once a bully, always a bully.

The Chair (Mr. Shafiq Qaadri): —invite you to please allow the witness to proceed.

Mr. Gilles Bisson: What a bully, wow. He tries to bully the committee.

Mr. Don Guy: Oh, well, great.

Mr. Gilles Bisson: Jesus.

Mr. Don Guy: Thank you for inviting me here today and for your patience while I was working out west in the spring when the initial invitations were sent. Based on what I've heard today, I will disagree respectfully with much of what the opposition has to say. That's okay; democracy is about many things, including the conflict and collision of partisans and ideas. In this instance, partisans were in conflict over pretty much the same idea: that the independent, arm's-length Ontario Power Authority's choices in Oakville and Mississauga were wrong and needed to be corrected.

In my view, democracy's main principle is government acting with the consent of the public, an engaged public making its voice heard in holding elected officials to account for their decisions and for their plans for the future with their vote. For me, and I hope for all of you in this room, the public is always right. In this case, concerning two southwestern GTA natural-gas-fired electricity plants, the public in the affected areas made its voice heard loud and clear. Premier Dalton McGuinty listened and acted, and he was right to do so in a democracy. The government he led chose a different policy than that recommended by the arm's-length, independent Ontario Power Authority, relocating a plant procured and sited in Oakville to a willing host community in eastern Ontario.

During the last election campaign, it led the Ontario Liberal Party, under Premier McGuinty's leadership, to choose to commit to a different policy than the OPA again, relocating a plant slated for Mississauga, following on the heels of the other parties, who had already listened

to their constituents and committed to outright cancellation.

The Premier deliberated on this course with his advisers but ultimately chose the relocation policy because it offered better value for ratepayers and moved the plants away from high-density areas and local health concerns. That is completely consistent with the style of leadership that Premier McGuinty brought to his job over nine years as Premier: listening and, if necessary, expending political capital to do the right thing, trusting that when the facts were known, the voters would come around, whether it was bringing in the health premium to avoid the massive hospital closures and layoffs that would have been occasioned by the hidden deficit left behind by the PCs in our first term; bringing badly needed tax reform, including the HST, that kept the Ontario economy treading water when most others were sinking in the global recession; or, more recently, the pursuit of wage restraint in the broader public sector.

I'm pleased to have been able to support his leadership and his agenda as a campaign consultant and director in four consecutive elections and as chief of staff between 2003 and 2006, an agenda that gave Ontario the best education system in the English-speaking world, the best health care system in Canada, and the best-educated and most innovative workforce in the world.

Now I'd be almost as pleased to take your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Guy, for your opening remarks. The floor is now to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Mr. Guy, you mentioned democracy an awful lot in your opening statement. Do you think it's in the best democratic interest to write an email that needs the Speaker to change his mind?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, that question is beyond the scope and out of order. The witness is directed not to answer. The floor is yours, Mr. Fedeli.

Mr. Victor Fedeli: Is it in the democratic interest to have a discussion that somebody is putting the member from Brant, the Speaker, on notice that "we need better here"? Is that in the democratic interest?

The Chair (Mr. Shafiq Qaadri): With respect, Mr. Fedeli: same comment.

Mr. Victor Fedeli: I see that you weren't confident coming out of DG's meeting with Speaker Levac. Is that in the democratic interest of Ontarians, to have an email that discusses the intimidation of the Speaker?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Same comment.

Mr. Victor Fedeli: If I can't ask these questions, I guess we can talk more directly about your deep role in the cancellation of the Mississauga gas plant. What was your role in the campaign of 2011?

Mr. Don Guy: I was campaign director.

Mr. Victor Fedeli: And who were the campaign chairs?

Mr. Don Guy: Greg Sorbara, Kathleen Wynne and—was there another one? No, it was Greg and Kathleen in this campaign. Sorry. I get the four of them mixed.

Mr. Victor Fedeli: Current Premier Kathleen Wynne was one of the co-chairs?

Mr. Don Guy: She was vice-chair.

Mr. Victor Fedeli: Vice-chair. Okay. When did you and the campaign chairs decide to cancel the Mississauga gas plant?

Mr. Don Guy: The Premier made that decision in consultation with his local-area caucus and candidates, who were reflecting the views of their constituents and making their voices heard loud and clear. As I said, in a democracy, I think that's the way it's supposed to work.

0930

Mr. Victor Fedeli: So you're suggesting that the caucus was aware of the decision?

Mr. Don Guy: The local-area members were aware of the decision. They're the ones who were pressing for it.

Mr. Victor Fedeli: You earlier had said "candidates and caucus." Can you be more specific?

Mr. Don Guy: The southwestern GTA Liberal team.

Mr. Victor Fedeli: When this political decision, as Premier Kathleen Wynne calls it a "political decision," was made, we had then-Finance Minister Dwight Duncan come to estimates. He said there was no cabinet discussion prior to the election, formal or informal, about relocation; that it was political. His answer to the committee: "Duncan Admits Liberals Cancelled Mississauga Gas Plant When Behind in Polls." Would you agree with that?

Mr. Don Guy: I haven't seen the headlines. The decision was made by Premier McGuinty in his capacity as leader of the Ontario Liberal Party in the midst of an election campaign, in the same way that your party's commitment to cancel the plant was made by your leader in his capacity as leader of the Ontario PC Party.

Mr. Victor Fedeli: Would you consider Charles Sousa one of those candidates and caucus members from that area?

Mr. Don Guy: He was from the affected area.

Mr. Victor Fedeli: How would he have heard about the cancellation of the gas plant?

Mr. Don Guy: Pardon me?

Mr. Victor Fedeli: How would Charles Sousa have heard about the cancellation of the gas plant in Mississauga?

Mr. Don Guy: I think he was at the announcement.

Mr. Victor Fedeli: Did you give him any pre-notice, any information in advance? Would he have had any information from anybody in advance?

Mr. Don Guy: Well, he's the one who made the announcement with the area candidates and caucus members. I think Mayor McCallion was there too.

Mr. Victor Fedeli: He was here at the justice committee on the 23rd of May. He says you told him.

Mr. Don Guy: Pardon me?

Mr. Victor Fedeli: Charles Sousa said you told him.

Mr. Don Guy: That I told him what?

Mr. Victor Fedeli: We asked him, "Did you know about the announcement? Were you told it was going to be cancelled? Who told you?" He said, "Two individuals: Dave Gene and Don Guy" called him.

Mr. Don Guy: We called him to arrange the announcement, yes.

Mr. Victor Fedeli: We asked him, "What did they tell you?" He said, "To prepare a press conference for that coming weekend to announce that we would relocate the Mississauga Sherway power plant." So you were one of the people to call.

Mr. Don Guy: We were the ones who arranged the announcement, consistent with the Premier's decision.

Mr. Victor Fedeli: That's your whole role: You were the announcement arranger?

Mr. Don Guy: Pardon me? I didn't hear your question.

Mr. Victor Fedeli: That was your whole role: You were the announcement arranger?

Mr. Don Guy: Announcement arranger? I suppose that's right. I'll give you the exact context, which is that in that campaign we made a number of regional announcements, one with respect to quarries—

Mr. Victor Fedeli: You weren't involved in the decision of it? You were only the guy who arranged for the announcement?

Mr. Don Guy: Was I involved in the decision?

Mr. Victor Fedeli: Yes.

Mr. Don Guy: Can you be more specific?

Mr. Victor Fedeli: Were you involved with the Premier of Ontario in the decision to cancel the Mississauga gas plant?

Mr. Don Guy: As I indicated in my opening statement, the Premier deliberated, and once he had made the decision to do something about the plant, which he had had misgivings about—and I think he has indicated in front of this committee on a couple of occasions that he'd had misgivings for some time. He had been in Mississauga and Etobicoke and Oakville a couple of times, I think, prior to making his decision. He heard from the area candidates, heard from local constituents and made his decision. At that point, he engaged his advisers in a discussion about the character of the decision: Would it be an outright cancellation like the NDP, PCs were advocating, or was there a better way that would deliver better value for taxpayers? Ultimately, he chose that better value for taxpayers, which was relocation.

Mr. Victor Fedeli: Yes, we've seen the better value. It's between—

Mr. John Yakabuski: You seem to think you know what the Premier's thinking.

Mr. Victor Fedeli: Well, he does seem to know what the Premier's thinking. I think there's a lot more to it than that. We'll get to that, though, John.

So Charles Sousa was informed by you and Dave Gene that you had decided to cancel the Mississauga gas plant—

Mr. Don Guy: No, sir, that's not correct. He was not informed by Dave Gene and I that we had decided. He

was informed that the Premier had made a campaign commitment, in his capacity as leader of the Ontario Liberal Party.

I don't know how it works in your party, but in our party, unelected people don't make those decisions.

Mr. Victor Fedeli: When did cabinet become aware of the decision to cancel the Mississauga gas plant?

Mr. Don Guy: I believe cabinet didn't meet until after the campaign. It was an Ontario Liberal Party commitment in the midst of an election campaign. It was not a government commitment. The party committed—

Mr. Victor Fedeli: So it was not a government commitment.

Mr. Don Guy: The party committed that, if re-elected—

Mr. Victor Fedeli: You acknowledge it was not a government commitment to cancel the Mississauga gas plant.

Mr. Don Guy: I think I've been pretty clear. The Premier made his commitment, in his capacity as leader of the Ontario Liberal Party, in an election campaign, in the same way that your leader made his commitment.

Mr. Victor Fedeli: The only reason I raise my eyes at that one, Mr. Guy, is because we have so many emails from people such as Laura Miller, who tried to insist that this was a government commitment; that they wanted to revisit history and make sure the cabinet members stopped saying it was a campaign decision and that it's a government commitment. Is she incorrect in suggesting that?

Mr. Don Guy: Mr. Fedeli, I don't have access to the emails you're referencing. Would you like to share them?

Mr. Victor Fedeli: We'll get around to that.

Mr. Don Guy: I think you need to elaborate on the nature of your question, because it sounds to me like you're doing a bit of a drive-by.

Mr. Victor Fedeli: No, no, I don't think it's a drive-by. I think it's pretty clear that you're saying it was not a government commitment. I think that might be the first time anybody has actually sat there and said that. That's deeply appreciated.

Mr. Don Guy: Well, you are aware, because there has been testimony in this committee, that cabinet did meet after the election campaign. I believe there has got to be some record of a cabinet decision to go forward with the election commitment, in the same way that there was a cabinet decision to go forward with the home renovation tax credit and a bunch of other platform commitments that were in the campaign.

Mr. Victor Fedeli: In the fall of 2012, you and senior staff in the Premier's office were exchanging emails on an assortment of topics—gas plants, prorogation, calling press gallery members offensive names, things such as that. Why wasn't the Premier's chief of staff, David Livingston, included in any of those emails?

Mr. Don Guy: Sorry, I don't understand the question.

Mr. Victor Fedeli: These are pretty deep topics—the gas plant, one of the biggest expenditures we were going to see this year, a major decision; prorogation—but the

Premier's own chief of staff wasn't in on any of these emails. Is it you who's calling the shots in the government, Mr. Guy?

Mr. Don Guy: No, Mr. Fedeli. Nothing could be further than the truth. Again—

Mr. Victor Fedeli: Well, it appears as if you're calling the shots.

Mr. Don Guy: Are you referencing emails from me?

Mr. Victor Fedeli: We have repeated email piles here—I'll get to handing some of them out shortly—where Laura Miller, for instance, is seeking your approval on strategic decisions. It appears as though—

Mr. Don Guy: No, I'm sorry. That's completely inaccurate.

Mr. Victor Fedeli: It appears as though she answered directly to you. Is that accurate?

Mr. Don Guy: Pardon me?

Mr. Victor Fedeli: I said, it appears as though you were calling the shots. We have repeated emails whereby Laura Miller seeks your approval on strategic decisions.

Mr. Don Guy: Of what nature?

Mr. Victor Fedeli: Gas plant communications.

Mr. Don Guy: Can you quote those emails, please?

Mr. Victor Fedeli: Do you have the package of emails? We'll start by handing a couple of these emails out, then.

It appears as though she answered directly to you, Mr. Guy. Mr. Livingston appears to be merely a figurehead here. Was he or were you calling the shots?

Mr. Don Guy: No, I'm sorry, Mr. Fedeli, that's completely incorrect.

Mr. Victor Fedeli: I was curious, because he's not involved in any of these emails.

Mr. Don Guy: So this is about the exchange of emails that took place—okay. I'll tell you exactly what the context was. The Premier and campaign chair had put our campaign team on an election readiness footing. We anticipated the possibility of a confidence vote in the House early in the fall, and as a result—

Mr. Victor Fedeli: So this is after the election now, the October election where you were the director. This is over, and now we're into the Legislature sitting—that period of time?

0940

Mr. Don Guy: We're now a year later, in the fall of 2012. I was re-engaged in my campaign duties to determine the possibility of an election campaign and to get the party on an election readiness footing. To do that, I needed to have information that indicated when—

Mr. John Yakabuski: You're making this up.

Mr. Don Guy: —that indicated when and how an election might transpire because, in a minority Parliament, that's a possibility at any time.

Mr. John Yakabuski: You're under oath.

Mr. Steven Del Duca: Chair, the member is heckling the witness while he's trying to ask a question asked by one of his caucus colleagues. That's ridiculous.

Mr. Bob Delaney: It's not even acceptable in the House.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen.

Proceed.

Mr. Victor Fedeli: Are you finished?

Mr. Don Guy: Yes.

Mr. Victor Fedeli: You were obviously heavily involved in the day-to-day operations of the government.

Mr. Don Guy: No, I was not.

Mr. Victor Fedeli: These emails here tell—you're involved in very minor decisions; you're involved in major decisions. You're involved in trying to misdirect the media, getting them into believing the Premier is going to run for the federal leadership on one day and suggesting that we throw a poll out there and then change—"Don't put it out there." You're looking for parallel news stories. You're the guy in control of all this. You're the guy, it appears, who is trying to control what people are either thinking about the Premier—you did it today in your opening statement. You were trying to justify the Premier saying there are no new taxes and then bringing in a health tax. You're trying to justify; you're trying to recreate the legacy. But here, while it's unfolding, you're trying to pre-position—you have a senior role in the government of Ontario, yet you're unelected—

Mr. Don Guy: No, sir, I have no role in the government of Ontario. I'm not involved in day-to-day, week-to-week or month-to-month operations of the government of Ontario.

Mr. Victor Fedeli: Quite frankly, that's not very credible. There are emails here that you're directing the traffic, if you can use that language. You're talking about the gas plant; you're talking about how to sequence out a full week's events. You misdirect people from focusing on the gas plant scandal. You're looking at where to send the Speaker—

Mr. Don Guy: No, I—

Mr. Victor Fedeli: This is all you—you and Brendan McGuinty. I presume that's the Premier's brother.

Mr. Don Guy: No. In fact, those emails do not indicate anything along the lines of what you just said. What the emails do indicate was a desire on the part of the campaign team to start getting our message out, which we were considering in a variety of capacities. You and your colleagues were—

Mr. Victor Fedeli: Look, that's not even credible. There are emails here that talk about you trying to direct the traffic. This is you. You're the guy at the centre of all of this. You're the guy. You're the guy.

Mr. John Yakabuski: Don's the guy.

Mr. Don Guy: "Direct the traffic": No, sir, I'm afraid that's not the case. In my capacity as campaign director—

Mr. Victor Fedeli: You knew the gas plant was going to be cancelled. You were involved in the decision. You knew the gas plant was going to be cancelled, yet government elected officials—cabinet ministers—had absolutely no idea. I asked Minister Bentley here, in this committee, "When did you hear about the gas plant cancellation?"

He told us he read it in the paper. This is a cabinet minister. I asked—

Mr. Don Guy: I think he was the Attorney General at the time.

Mr. Victor Fedeli: —"When did you become aware of that decision?"

"Me, personally? When I read about it in the paper."

Let's go to the energy minister. He heard about it from Sean Mullin. I'm not sure he was still there at the time. Brad Duguid said, "Well, he may have been on the campaign, right? Okay. Yes, it was somebody from the campaign. It wasn't from Queen's Park."

You know about the cancellation of the gas plant but the energy minister, the Attorney General and others—the list goes on and on. Nobody knew about this thing in advance. Jim Hinds—

Mr. Don Guy: I did know about it in the context of a campaign commitment by the leader of the Ontario Liberal Party because I was the campaign director in daily contact with the leader on the bus and with other folks in the campaign.

Mr. Victor Fedeli: You're in this. You're the guy. You've got other people like Jim Hinds, who didn't know about it either. He heard about it from Chris Morley.

Mr. Don Guy: Sorry, who is Jim Hinds?

Mr. John Yakabuski: The chair of the OPA.

Mr. Victor Fedeli: The Ontario Power Authority—Jim Hinds.

Mr. Don Guy: No, I'm sorry.

Mr. Victor Fedeli: You don't even know him.

Mr. Don Guy: No.

Mr. Victor Fedeli: By the way, your government is blaming him for most of the cancellations.

Mr. Don Guy: I didn't know he was the chair of the OPA.

Mr. Victor Fedeli: That's a good one.

Mr. Don Guy: I guess—

Mr. Victor Fedeli: You didn't get the speaking notes this morning, I can tell, on that particular one.

Mr. Don Guy: No, I did not. I guess the—

Mr. Victor Fedeli: Normally, he does write them. This is a little miscommunication between the Liberal Party.

Mr. Don Guy: Mr. Fedeli, with the greatest of respect, I appreciate what you're—I guess I understand what you're trying to do.

Mr. Victor Fedeli: It's not what I'm trying to do. This is what the documents say. We've had many people here before you who all tell us they didn't know anything about the gas plant cancellation, but you knew. You're pulling the strings here for the government of Ontario.

Mr. Don Guy: No.

Mr. Victor Fedeli: You, Brendan McGuinty and a couple of others: David Gene—

Mr. Don Guy: I'm afraid you can—

Interjections.

Mr. Don Guy: The challenge—

Interjections.

The Chair (Mr. Shafiq Qaadri): Is this a point of order?

Mr. Bob Delaney: It is a point of order. Is Mr. Fedeli asking questions or offering testimony?

The Chair (Mr. Shafiq Qaadri): It's not a point of order, Mr. Delaney, but I thank you for your sentiments.

Mr. Fedeli.

Mr. John Yakabuski: Mr. Guy can start by telling the truth.

Mr. Don Guy: I am telling the truth.

Mr. John Yakabuski: That would be a good start.

Mr. Don Guy: I'd like to remind you, sir, that I'm under oath and obligated and compelled to tell the truth, and I'm doing so. I guess the truth, though, is inconvenient for the case that you are trying to make.

Mr. Victor Fedeli: So you're trying to tell us that you were the director of the campaign, and all of these elected officials, these cabinet ministers, including the Minister of Energy, were all kept in the dark until the day of the announcement. Then who is calling the shots, if not you?

Mr. Don Guy: The Premier calls the shots.

Mr. Victor Fedeli: Because it certainly appears that you're calling the shots.

Mr. Don Guy: In our party, Mr. Fedeli, the Premier calls the shots. I don't know how it works in your party, but that's who calls the shots in the government and in the party.

Mr. Victor Fedeli: When did your cabinet first understand the costs associated with both the Oakville and the Mississauga cancellations?

Mr. Don Guy: Sorry, when did the government—

Mr. Victor Fedeli: Yes, when did the government—

Mr. Don Guy: I have no idea.

Mr. Victor Fedeli: So you went ahead with an announcement to cancel something. You had no regard for the price of it, no regard for the taxpayers, this better value for the taxpayer?

Mr. Don Guy: I didn't go ahead with anything.

Mr. Victor Fedeli: But you suggested there's better value for the taxpayer.

Mr. Don Guy: You asked, when did the government know? I don't know when the government—I'm not in the government.

Mr. Victor Fedeli: You suggested these were cancelled to give better value for the taxpayer, yet you don't know how much the gas plants costs are. How can that be better value for the taxpayer, if you don't even know how much it cost back then, and we don't know today?

Mr. Don Guy: I realize that the truth is inconvenient for the fictitious narrative that you're trying to—

Mr. Victor Fedeli: Well, there's nothing fictitious. We don't know how much it cost to cancel the Oakville gas plant. We still don't know. We've been at this for a year and a half and we haven't got a clue how much it cost to cancel it.

Mr. Don Guy: The policy that was adopted by the Ontario Liberal Party—

Mr. Victor Fedeli: But you said it's cancelled for better value.

Mr. Don Guy: —in the campaign was—

Le Président (M. Shafiq Qaadri): Merci, monsieur Fedeli, pour vos questions.

Mr. Don Guy: Mr. Chair, can I just finish that answer?

Le Président (M. Shafiq Qaadri): Je passe maintenant à M. Bisson.

Mr. Bisson, the floor is yours.

Mr. Don Guy: Mr. Chair, can I finish that answer, please?

The Chair (Mr. Shafiq Qaadri): No, Mr. Guy, you may not.

Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, thank you.

Mr. Guy, thank you for being here this morning.

Mr. Don Guy: It's my pleasure.

Mr. Peter Tabuns: I listened to your opening remarks, and there were a few things that struck me in that. One was the strategic approach that you've taken, the Liberal Party has taken, putting the OPA as the bad guy making all these nasty decisions, corrected by a good guy—sorry, by a good person, the Premier. You know, in fact, that the Mississauga plant was commissioned by the Ministry of Energy back in 2004. The OPA didn't exist at that time, so the OPA couldn't have made that decision.

Secondly, you may well be aware that the OPA was instructed by a Liberal Minister of Energy to put a plant in the Oakville area. In fact, he wrote a direction that he concurred with—

Mr. Don Guy: Mr. Tabuns, you know, you've spent a lot of time thinking about these things. As you know, you were elected in a by-election opposing a large-scale urban-density gas plant, and I believe you've been on the record with respect to Oakville and Mississauga early on, so I respect you for that.

I think that the question is, and the Premier has said it on a couple of occasions, I think here at this committee—there were a couple of things that we as a party, and I guess he believes that the government he led, got wrong, and he sought to correct those, and the government that he led and the party that he led did so.

Mr. Peter Tabuns: We'll just set that aside. The OPA should not be the fall guy for all this. It was the Liberal Party, as the government, that decided to site these plants and cause this mess. When you were—

Mr. Don Guy: No. Sorry, I don't agree with that.

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Mr. Peter Tabuns: As campaign manager—and you were campaign manager from October 1998 to October 2011, and now we find out you were re-engaged in 2012—were you called in for decision-making on the cancellation of the Oakville plant?

Mr. Don Guy: No.

Mr. Peter Tabuns: Were you involved in discussions with the Premier on the Mississauga plant?

Mr. Don Guy: I was involved in discussions with the Premier on the Mississauga plant once he had—I guess once he had started making his decision in the election

campaign. So there were a couple of conversations that I recall.

Mr. Peter Tabuns: And can you tell us when those conversations took place?

Mr. Don Guy: They would have taken place in the days before the announcement was made.

Mr. Peter Tabuns: About a week before? Two weeks before?

Mr. Don Guy: I believe it would have been closer to that, because once he had made his decision, we wanted to move with alacrity to get it announced and get it out into the public domain.

He was, I will say, particularly—it was important to him not to leave it to the last minute, to get the announcement out there prior to the televised leaders' debate so that the province would have a chance in the televised leaders' debate to see what all three parties were considering on that matter. It was a matter that was discussed in the leaders' debate, as you'll recall. The whole province had a chance to cast a ballot based on the positions of the three parties with respect to those plants and other broader issues.

Mr. Peter Tabuns: You referred to "engaged his advisers on the matter" with regard to the cancellation of the Mississauga plant. Who were the advisers?

Mr. Don Guy: I'm trying to recall. These calls would typically take place with the bus, and they used a speakerphone on the bus. So whoever would have been on the bus with the Premier would have been privy to the conversation, which meant that Morley was there for sure. I believe Brendan was there. On our end, it would have been the policy folks who knew the file, the communication folks, who would have a responsibility for shaping an announcement, and, I believe, myself.

Mr. Peter Tabuns: From what I gather, the then Minister of Energy, Brad Duguid, was not consulted on this. He was told about it afterward.

Mr. Don Guy: I don't recall exactly how Mr. Duguid was kept in the loop or informed, but I know he knew about it prior to the announcement being made.

Mr. Peter Tabuns: He tells us he was given a phone call and told it was happening. So none of the advisers were, in fact, the people who were carrying this file in your cabinet.

Mr. Don Guy: Mr. Duguid didn't carry the file after the election, as you know.

Mr. Peter Tabuns: He had been carrying it up to the date of the election. He had some familiarity with it.

Mr. Don Guy: Yes.

Mr. Peter Tabuns: Not part of it. Morley, Brendan, the policy folks—who are we talking about there? Jim Hinds?

Mr. Don Guy: You know what? I could go back to see if I have notes on exactly—

Mr. Peter Tabuns: I would appreciate it if you would, and if the Chair would ask that it be noted as an undertaking that Mr. Guy will go back and check who the policy advisers were.

Mr. Don Guy: I'll see what I have.

Mr. Gilles Bisson: So you kept your notebooks, unlike Mr. Morley.

You and Dave Gene called Charles Sousa to tell him that you were cancelling the Mississauga plant.

Mr. Don Guy: Dave Gene and I called Mr. Sousa to indicate that the Premier had made a decision to relocate the plant. We asked him to help organize the announcement, which was what the Premier's direction was.

Mr. Peter Tabuns: What did you, as a group, have to say in that conversation?

Mr. Don Guy: Sorry?

Mr. Peter Tabuns: Can you tell us the elements of the conversation? Did you talk about the cost? You say here that you felt that this was the best value for taxpayers. Did you talk about the cost at that point?

Mr. Don Guy: What we talked about was the relative value of outright cancellation versus relocation.

Mr. Peter Tabuns: And did you have any numbers?

Mr. Don Guy: I don't recall that Dave and I would have had a conversation about numbers with Mr. Sousa, no.

Mr. Peter Tabuns: Because as far as we can tell from testimony and documents to date, no one knew what this was going to cost. You guys were taking a leap into the dark.

Mr. Don Guy: I think it was anticipated that there would be costs, but the policy of cancellation and paying out the value of the contract and getting no electricity was a worse choice than a decision to relocate. There would likely be some costs; that was part of the discussion at the announcement that Mr. Sousa and the candidates made with the media. So it was anticipated that there would be costs, but that, at the end of the day, some value would be captured through the delivery of electricity. That was better than getting nothing for it.

Mr. Peter Tabuns: So how did you know this was best value for taxpayers? You didn't know what the numbers were going to be. If you left it in place, it would be one cost; if you relocated, it would be another cost. Why was the relocation considered best value for taxpayers?

Mr. Don Guy: I think typically it would be the case that a vendor would seek to deliver on their contract and capture the value as much as possible. I have not been involved in any way, shape or form with any of the discussions or negotiations that have transpired since, but that does seem to be the case from what I've read from media.

Mr. Peter Tabuns: And no one around the table who had already gone through the Oakville mess, through the ongoing fighting, negotiating, lobbying, said to you guys, "You know, this is going to be a total disaster if we go forward. We're going to have a huge problem with this"? No one said there's something to learn from Oakville?

Mr. Don Guy: Well, I don't think the Oakville matter was resolved in any way, shape or form at that point—

Mr. Peter Tabuns: No, it wasn't.

Mr. Don Guy: —and I don't think there was a sense of how it would go, one way or the other. Ultimately, from what I understand—again, I haven't been involved—

it sounds to me like the decision by the government and the negotiation to relocate the plant to a willing host community in eastern Ontario seems to be a win-win.

Mr. Peter Tabuns: Well, I think it's certainly a win for the Liberal Party. I would say in terms of the cost, we're all waiting for the Auditor General to come forward. We're already looking at somewhere in the range of \$400 million, \$500 million, which is an awful lot of extra cost for the people of this province.

Mr. Don Guy: Is that the aggregate cost of the two plants?

Mr. Peter Tabuns: No.

Mr. Don Guy: That's the Oakville.

Mr. Peter Tabuns: That's a lot of money. That is a lot of money.

Mr. Don Guy: That's a lot of money, but the enterprise value of these contracts—we're delivering massive amounts of electricity over 20 years—is a lot more than that.

Mr. Peter Tabuns: Was Kathleen Wynne involved in the decision to cancel the Mississauga plant in her role as vice-chair of the campaign?

Mr. Don Guy: No, she was not.

Mr. Peter Tabuns: Never consulted?

Mr. Don Guy: No.

Mr. Peter Tabuns: So was her role as an adornment, or did she actually have a decision-making role?

Mr. Don Guy: Her role was—she had a variety of responsibilities that Mr. Sorbara had assigned her as his vice-chair. Energy policy was not one of them, so she was not consulted with in advance.

Mr. Peter Tabuns: On another matter, why were you so concerned with the story that Karen Howlett at the Globe and Mail was planning to write about the gas plant issue being key to Dalton McGuinty's leaving office and proroguing?

Mr. Don Guy: I'm glad to have that question. The context is this: I believe Ms. Howlett's inquiry came after the Premier had made his resignation announcement and done his media avail. We were back in his office. The question came from Ms. Howlett, indicating that she was pursuing, frankly, a wrong course of inquiry. She indicated that she had a source who claimed that they were part of the discussions around the decision to retire. The source was clearly misleading her. That upset me. It upset me because it was coming at an emotional time, as you can imagine, after the Premier had just retired. I wanted the record to reflect what was true, because I was part of those discussions around his decision to retire. I knew exactly what had transpired, and the rendition that she was indicating was not accurate. It came at an emotional time, and I used language I should not have. The language was inexcusable. I've since apologized to Ms. Howlett, publicly on Twitter and privately in an email, and she has been gracious enough to accept the apology.

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Mr. Peter Tabuns: You're probably well aware that Laura Miller, when she was here last week, in response to a similar series of questions, remarked that the discus-

sion of prorogation ramped up dramatically after the gas plant documents started coming out.

In fact, it seems like the Globe and Mail had got a substantial part of the story right: that the gas plant scandal and its political impact did have a huge motivating impact on Mr. McGuinty, did move things forward.

Mr. Don Guy: No, I'm sorry, Mr. Tabuns; it's important to me that this actually be reflected accurately. The Premier and I had dinner in June, when he indicated that he was going to contemplate, over the summer, whether to retire. He did not want to retire prior to the by-election that took place that fall in Kitchener-Waterloo, because he thought it would be disruptive, but he came back from the summer, and once the by-election was out of the way, he began to inform his staff and asked us to organize. That was also part of why I became re-engaged: because that was something that was important to him.

In that discussion where he informed us—I guess on the Saturday—there was no discussion of gas plants or whatever the case may be. There was a discussion that was taking place—I guess in other places—about prorogation, whatever the case may be, but that was not part of the discussion around why he left.

Mr. Peter Tabuns: Thank you. I'll turn it over to Mr. Bisson.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson?

Mr. Gilles Bisson: Back in September 2012, were you employed by the government of Ontario, the Premier's office or any entity of Liberal caucus services?

Mr. Don Guy: No.

Mr. Gilles Bisson: Earlier in your testimony, you were saying that you were not involved in any of the decision-making, but we have emails dating back to September 2012, and I just want to go through a couple of them.

An email from you on the 21st says, "We could make the contempt thing a confidence vote like Harper. And drive right by it with our own spin."

Laura Miller then responds—and this is what's interesting—on the 21st of October: "Great. When you figure it out"—meaning you, Mr. Guy—"we are happy to execute." Sounds to me like she's waiting for some sort of direction from one Mr. Don Guy.

Then, another email goes out from Laura Miller on the 21st—

Mr. Don Guy: Can I answer that?

Mr. Gilles Bisson: Let me finish. "I'm not sure if this is what you mean. But Neala is now apprised of the DH Hydrol severance and the Tony Clement being lobbied by his wife. Could deploy this week if you want"—again, speaking about Mr. Don Guy.

Mr. Don Guy responds on the 20th: "This is good. I think we also leak tomorrow that the Premier has been taking calls this weekend and is discussing the leadership with his family with an intention of making a decision early this week."

It's pretty clear from the emails that people who were employed by the Premier, in the Premier's office, are seeking your advice and taking their direction from you.

So which is it: Were you giving direction or were you not giving direction?

Mr. Don Guy: No. Mr. Bisson, the interesting thing about this exchange of emails over the two days prior to the possibility of an election campaign commencing is that none of them have anything to do with the operations of government. All of them have to do with the—

Mr. Gilles Bisson: Hold it. Hold it. No, you don't get away with that.

Mr. Don Guy: No, sir—

Mr. Gilles Bisson: This has everything to do with the government—

Mr. Don Guy: Can I answer the question?

Mr. Gilles Bisson: —because we're talking about executing direction from the Premier's office.

The Chair (Mr. Shafiq Qaadri): Gentlemen. Let him speak and answer.

Mr. Don Guy: No, they have nothing to do with that.

It would seem to me—and I imagine this takes place in each of your offices—there is some coordination of communication between the party and campaign side of the organization and the government side. I would want people on the government side to know what we were thinking about and what we were thinking about communicating from a campaign perspective. For example, with respect to the possibility of defeat in the Legislature on a contempt motion: If that were to be considered a confidence matter, then my advice to the Premier and the campaign leadership would have been to treat it as a vote of confidence on the economy, much like Mr. Harper did the previous spring, and start a campaign on the basis of an economic theme, and that is what is referenced by the notion of “driving right by it.”

Mr. Gilles Bisson: But it's really clear by the emails that you're giving—

Mr. Don Guy: Sir, that has nothing to do with—

Mr. Gilles Bisson: It is pretty clear by the emails that you are giving direction to the Premier's office, so what I'm going to ask you again—

Mr. Don Guy: No, it's not clear from that at all.

Mr. Gilles Bisson: Did you or did you not give direction to people in the Premier's office in regard to this particular matter in and around September/October 2012?

Mr. Don Guy: No, it's not clear from that at all. What—

Mr. Gilles Bisson: Okay. That's all I wanted. Thank you.

Mr. Don Guy: It's not clear.

Mr. Gilles Bisson: So back to the time—

Mr. Don Guy: And it didn't actually happen.

Mr. Gilles Bisson: Well, the emails are there. These were not fictitious emails.

Mr. Don Guy: The emails do not indicate any direction or involvement with operations of government.

Mr. Gilles Bisson: “When you figure it out,” says Laura Miller, essentially. The emails are pretty clear.

Mr. Don Guy: When I figured out how to position a campaign, yes, I was going to let them know.

Mr. Gilles Bisson: Let me get back to the period of the campaign. You said yourself earlier in your testimony, in answers to Mr. Tabuns and, I think it was, Mr. Fedeli, that in fact you were not part of any decision when it came to the cancellation of the gas plants during the campaign. Is that true?

Mr. Don Guy: Sorry, can you repeat that question? It's just a little fuzzy.

Mr. Gilles Bisson: You were saying, in answer to questions, that you had no role in making decisions around the cancellation of the gas plant during the campaign.

Mr. Don Guy: My role was as an implementer, not as someone who makes a decision. The prerogative to make a decision, a policy commitment in the course of an election campaign in the Ontario Liberal Party, is the leader's.

Mr. Gilles Bisson: So you're saying, no, you had no role then. Why, then, did Mr. Duncan, the Minister of Finance, at estimates committee last year in, I believe, May or June 2012, under oath say, it was a “political decision;” it was not a government decision?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Don Guy: Well, it was a political decision. It was a campaign decision made by the leader of the Ontario Liberal Party, not by his staff; by the leader of the Ontario Liberal Party who happened to be the Premier.

Mr. Gilles Bisson: So you never gave advice to the Premier of Ontario or the campaign team that the right thing to do for the Liberal Party at the time, in order to save those seats, was to cancel the gas plants. Yes or no?

Mr. Don Guy: He had arrived at that conclusion independently based on input from caucus and candidates and from constituents that he had encountered prior to the campaign. That ramped up during the course of the campaign when he was in the region.

Mr. Gilles Bisson: I ask you again: Did you play any role whatsoever when it came to making the decision of the cancellation of the gas plants during the election?

Mr. Don Guy: Did I play any role—

Mr. Gilles Bisson: Did you play a role in the decision to cancel? Yes or no?

Mr. Don Guy: Well, the decision to cancel the Mississauga gas plant—the policy for cancelling the Mississauga gas plant—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Thank you, Mr. Guy.

I would now move to Mr. Del Duca. Just to remind committee members: The questions are not reducible to yes or no, and the witness will be allowed to please answer as he sees fit.

Please, Mr. Del Duca.

Mr. Steven Del Duca: Thank you, Mr. Chair. Good morning, Mr. Guy. Thank you very much for being with us here this morning.

Before I get to my actual questions, I just wanted to know if—at the end of the questioning from the PC

caucus, I guess you were cut off a little bit. I'm not sure if you want to add anything to what you were trying to say. I know it was about 20 minutes ago and lots has transpired since then. I'm not sure if you wanted to add anything to what you were trying to say in response to Mr. Fedeli's last question.

Mr. Don Guy: I don't actually recall the question now.

Mr. Steven Del Duca: That's understandable.

Mr. Don Guy: Thank you for the opportunity.

Mr. Steven Del Duca: I want to start by asking you about your role as campaign director for the Ontario Liberal Party from 1998 until 2011. As I understand it, you also served as chief of staff to the Premier from 2003 to 2006. But after leaving government, you continued to volunteer with the Ontario Liberal Party.

I think it's pretty clear, and I think we all know around this table, that all political parties rely on outside volunteers and advisers during and between election campaigns. Can you please, for this committee, describe a little bit more about your role during this time period?

Mr. Don Guy: Well, again, I don't know how it's done in other parties. The role of campaign director, since I've been involved, has been essentially a temp job where someone is retained on a consulting basis to organize an election campaign anywhere from 12 to 18 months in advance. That was the case in 2003 and in 2007. I left the Premier's office to organize the next campaign, and in 2011, I re-engaged, yes, somewhere around September or October 2010, and then, I believe, had a contract from January 2011 through to October 7.

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In the most recent instance, with respect to the current session of the Legislature, it was really only when it was apprehended that a vote could be lost in the Legislature that I began to re-engage, on a sort of war footing, to organize an election campaign. That role basically ended when the Premier made his retirement announcement. I'm a free man.

Mr. Steven Del Duca: I would imagine that as an adviser, you would perhaps from time to time have suggestions or ideas for things like communication strategies, responses to specific issues, and I would assume that there were times when you might have floated an idea or an option that staff or elected officials chose not to pursue. Is that right?

Mr. Don Guy: Oh, fairly frequently. My ideas on what would constitute a political platform for a campaign would significantly differ from the people in government because they were in government and they were making decisions that were typically outpacing whatever concerns might arise with respect to a platform. In 2007 and in 2011, we principally ran on our record, as you know. As a result, there's a tremendous influence there.

If you want me to point to a policy that I thought was going to be politically problematic, the HST would be a doozy—

Mr. Gilles Bisson: We thought so too.

Mr. Don Guy: Of course, after fighting tooth and nail, both opposition parties ultimately accepted it, but that's politics.

Interjection.

Mr. Don Guy: I didn't hear it talked a lot about in that election campaign, but it could be that I wasn't paying attention.

Mr. Steven Del Duca: From your experience, who would you say makes the final decision on government policy or government responses to issues: staff, campaign volunteers or is it the elected members or Premier? Who makes the final decision, in your experience?

Mr. Don Guy: In the party, in an election context, in what goes into an election platform, it's the Premier in his capacity—well, it's the leader of the Ontario Liberal Party. So when we're in opposition, it's the leader of the party as leader of the party, or opposition, whatever the case may be. In government, it's the Premier in his capacity as leader of the party.

In government, my experience in 2003 and in 2007 was that ministers would bring proposals forward—some of them had circulated from caucus, some from the public service, some from external groups—for cabinet consideration. There'd be a discussion in cabinet, and ultimately the Premier would make the final call, taking a sense of the room.

Mr. Steven Del Duca: Thank you. With respect to the specific decision to relocate the Oakville and Mississauga gas plants, and specifically in terms of the Mississauga plant, this committee has heard that there was enormous community opposition to the plant, particularly in the summer and fall of 2011, when the proponents secured funding and construction started. Community leaders, including Mississauga Mayor Hazel McCallion, have testified here at this committee that there were serious health and environmental risks for the people of Mississauga and the people of Etobicoke. Were you aware of the opinions and concerns expressed by the community and local members about the siting of that plant?

Mr. Don Guy: Certainly. We were aware of it through media monitoring and through input from the local candidates through their regional organizers and through campaign manager calls and candidate calls and all those sorts of things.

Mr. Steven Del Duca: As the Ontario Liberal Party campaign director for the 2011 election campaign, I'm going to assume that you paid fairly close attention to what the other two parties were doing in terms of their policies, their proposals and their commitments—both the PCs and the NDP. I'm assuming that you would be fully aware that during the 2011 election campaign, both opposition parties pledged to cancel the Mississauga plant. Would I be right in making that assumption?

Mr. John Yakabuski: Point of order, Speaker.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Yakabuski.

Mr. John Yakabuski: According to the mandate, those parties had nothing to do with the decision to either locate, cancel and relocate the gas plants. If you're going

to maintain your belief in your ruling on our motion this morning, I would ask that those questions be ruled out of order. The opposition parties—neither the New Democrats nor the PCs had anything to do with the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. I appreciate your reminder to the committee on the scope of the mandate here. The questions are in order. I'd invite you to please proceed.

Mr. Victor Fedeli: How?

Mr. John Yakabuski: Speaker, how can you consider there to be consistency on the ruling you made today and then allow the questioning on this to continue?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. If you allow me to deliberate, I will do so.

Mr. Yakabuski, I do appreciate that the entire issue now is getting into a level of abstruse theory. I would invite Mr. Sibenik, our legal counsel, to please weigh in on this as well.

Mr. John Yakabuski: Okay; that would be helpful.

Mr. Peter Sibenik: These kinds of questions had been asked in the past, and they were receivable at that particular time. There was no objection taken at that time. It seems to me that the kinds of questions that were being asked had to do with—had an impact on the decisions that were taken. It seemed like there were discussions with respect to previous witnesses dealing with the situation that the other political parties were aware of what the other party was trying to do. So that has a bearing and impact on the actual decision.

Mr. Victor Fedeli: You don't think intimidating the Speaker has impact?

Mr. Steven Del Duca: Mr. Chair, I hope the clock has been stopped—

The Chair (Mr. Shafiq Qaadri): Thank you—
Interjection.

Mr. John Yakabuski: No, excuse me. He has offered a legal opinion and I would like to question him on his legal opinion, and I think I have that right to do so, Chair.

Mr. Peter Sibenik: It's more of a procedural one, sir.

Mr. John Yakabuski: Right.

Mr. Peter Sibenik: Go ahead, sir.

Mr. John Yakabuski: So you're saying that in the past, the other parties were aware of that line of questioning and didn't object to it. Absolutely correct, because we were taking the view that all parties were taking, that the Premier was taking and that the ministers were taking: that we were given as broad a mandate as possible to the questions that would be asked by this committee. However, last Tuesday, and again reiterated today, the Chair has ruled that we're narrowing the focus of questions in this committee by the very ruling that we've been given this morning with respect to asking questions pertaining to the motion that Mr. Bisson put forward to the committee.

If the Chair has now decided that we're narrowing the scope of the committee, far be it for the members of the committee to overrule him on that. I'm asking for con-

sistency on the part of the Chair that if we're going to have rulings that limit the scope of the committee from one point of view, then we must be consistent and limit the scope of the hearings from asking questions about what the opposition may or may not have done or what they would have said, because they actually have nothing to do with the decisions with regard to the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

Mr. Peter Sibenik: I think, in my view, the line of questioning there has to do with the decisions to cancel because decisions being made with respect to what the other political parties were promising during the campaign.

Mr. John Yakabuski: You're reading the minds of the Liberals at this point. That's not possible for you to do. You're here to give legal advice.

Mr. Peter Sibenik: I'm just saying—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. We'll close that down. Mr. Bisson: a point of order, I presume?

Mr. Gilles Bisson: Two very quick points: First of all, I do not protest if you want to ask those questions. I'm fine, as a New Democrat. We know what our position was.

Number two is, the position of the party and the position of Andrea Horwath is that we would not take a position publicly to cancel until we looked at the numbers.

The Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. Though well received, this is not the time or forum to express that. Once you have the floor again, you're welcome to express those sentiments.

The time recommences. Mr. Del Duca.

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Mr. Steven Del Duca: Thank you very much, Mr. Chair. Going back to what I was talking about before the interruption, almost every witness before our committee has confirmed that there were clear commitments made by all three parties to cancel or relocate the Mississauga plant. In fact, Mississauga Mayor Hazel McCallion came to the committee and said, "The impression that was certainly given beyond a doubt ... I think all parties would have cancelled it."

We have election flyers; we have robocall transcripts that confirm these very clear commitments. Of course, there's the infamous YouTube video of Mr. Hudak announcing that the plant would be "Done, done, done" if he was elected. I'm sure that you're also aware of the commitments made by local NDP candidates that they opposed the plant.

Given all of that, what do you make of the opposition parties coming here today and over the last number of weeks and trying to rewrite history? They stand up every day; they point fingers at our government for following through on the very same commitments that they made and their leaders made and their party and candidates made to the people of Mississauga. What do you think of that?

Mr. Gilles Bisson: We never made that commitment, Steve. We never made that.

Interjection.

The Chair (Mr. Shafiq Qaadri): Gentlemen. Mr. Guy, please. The floor is yours.

Mr. Don Guy: Thanks, Mr. Chair—

Mr. John Yakabuski: You're asking the opinions of the Liberal campaign chair. How partisan is that? Answer the questions in factual ways.

The Chair (Mr. Shafiq Qaadri): Thank you for your contributions.

Please, Mr. Del Duca.

Mr. Don Guy: Thank you, Mr. Chair. We're certainly aware of what the positions were that the other parties had taken. As you'll recall, after our announcement was made on behalf of the Ontario Liberal Party to relocate the Mississauga plant, the PCs in particular spent much of the balance of the campaign visiting the site and saying that they were going to kill it faster or cancel it faster or something like that. They continued to do that after the election and after the government was formed. It was never my impression that they had a sense of what the costs would be or that they would be prepared to pay out the full value of the contract and get no electricity for it. But I guess that's the way they do things.

Mr. Steven Del Duca: Well, I think your comment about the PCs in particular not having any awareness around what the potential costs of Mr. Hudak's commitment would have been actually resonates fairly strongly.

Mr. Hudak, as you may know, was here before this committee a number of weeks ago. He was asked by me specifically 28 times while he was here before committee questions regarding any research that he or his team might have done with respect to costs, and 28 times before this committee Mr. Hudak refused to answer.

Given that he has refused to answer those questions, this committee has decided to invite local PC candidates who were particularly vocal in their opposition to the Mississauga power plant. I think we've now sent 10 invitations to three of their candidates representing ridings in the affected area. But despite these repeated invitations, those candidates continually refuse to appear before this committee. Why do you think that is?

Mr. Don Guy: Well, I wouldn't begin to speculate on the state of mind of the PC candidates or their leader. I wasn't aware that they had been invited so many times, so I couldn't begin to explain any of that kind of behaviour.

Mr. Steven Del Duca: Okay. With respect to the estimates motion that has come up a little bit so far here this morning, I'd like to ask you now about the motion from May 2012 from the estimates committee moved by Mr. Leone for correspondence from the energy ministry and the OPA relating to the Mississauga and Oakville gas plants. As you may know, at the time of that particular motion, complex and sensitive negotiations were ongoing with both of the companies. From your experience working in government and working on sensitive files, what do you think it would have meant if the OPA's and

the province's negotiating position was prejudiced because the company had access to confidential and privileged information?

Mr. Don Guy: I'm trying to think of an analogue from when I was chief of staff. Actually, "analogue"—I think, yes.

Mr. John Yakabuski: Let's get a grammar teacher—
Interjections.

The Chair (Mr. Shafiq Qaadri): Gentlemen, the lesson will be after. Please, proceed.

Mr. Don Guy: I think to some extent, I'd be more informed by experience in the private sector and in commercial activity, which is where I've spent most of my career and most of my adult life. When you do a business deal, you typically do it in confidential circumstances so that you can get the best possible value for your shareholder vis-à-vis the marketplace at large.

I think that those values should inform the way governments pursue their negotiations of commercial arrangements. Those same values, which are that we should be getting the best possible value for the taxpayer or the ratepayer or whatever the case may be, should be at the root of how we're motivated and how we conduct ourselves. I think, again, that's consistent with the policy that the party took in the election campaign with the Premier's decision, which was to relocate and pay some sunk costs but ultimately get the value of the contract delivered in electricity versus outright cancellation and getting no electricity.

Mr. Steven Del Duca: Thanks for that answer. This committee has now heard from somewhere in the neighbourhood of 40 or 43 or 44 witnesses, and the overwhelming opinion that we've heard time and again from the witnesses is that if these documents had been made public, it would have been detrimental to the negotiations.

When he was here before the committee, Chris Bentley told us that "producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario."

Former secretary of cabinet Shelly Jamieson testified, "It would have harmed the negotiations for sure. Nobody likes to ... have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves."

The Auditor General stated: "It's like in poker. You don't show the people around the table your cards."

The PC caucus in particular likes to say that they stand up for taxpayers, and yet they wanted to make this information public. Then that would have hurt negotiations, thus hurting the taxpayers. So would you agree that, again, it seems like they're actually more interested in scoring cheap political points than actually working for the public good? Would you agree with that?

Mr. Don Guy: Well, what I would say—

Mr. John Yakabuski: Do you expect him to say no?

Interjections.

The Chair (Mr. Shafiq Qaadri): Gentlemen—

Mr. Don Guy: What I would say in response to that is you see it, certainly—

Interjection.

Mr. Don Guy: —you certainly see it south of the border, where you see Republicans, who have pledged that the most important aim for their party is to make, say, the Obama presidency fail, as opposed to America succeed. Unfortunately, I think those sorts of behaviours, some of which I was not aware of, to be honest, are entirely consistent with that tradition, which is that the partisan aim of defeating the government is more important than getting the best value for the taxpayer or helping Ontario succeed. I guess we're seeing some of that here today as well, unfortunately.

Mr. Steven Del Duca: I think there's probably a couple of minutes left in my time for this particular round. I just want to talk a little bit about your experience with the Liberal government when we were first elected, in 2003.

As you all know, our government inherited an energy crisis from the PCs. In fact, this week marks the actual 10th anniversary of the blackout. Since that point in time, the Liberal government has built a clean, modern, reliable electricity system, and I think that's a part of the story that has been missing over these last number of weeks with respect to the context around our discussions.

From your experience, working for the government, starting back in 2003, what are the major differences in Ontario's energy system today?

Mr. John Yakabuski: Point of order, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, point of order.

Mr. John Yakabuski: In Mr. Guy's last answer, and Hansard will reflect that, he questioned the motives of members of this committee with regard to what we're trying to accomplish here on behalf of the people of Ontario and the Legislative Assembly.

Now, if he wants to reiterate that answer, I welcome him to do it. But for a witness to come here and challenge and question—

Mr. Rob Leone: And impugn motives.

Mr. John Yakabuski: —and impugn the motives of the members of this committee, I think, is—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski—

Mr. Steven Del Duca: Mr. Yakabuski, in his opening comments today, called into question you, as the Chair, and the Clerks' office as well.

The Chair (Mr. Shafiq Qaadri): I believe that the procedure that you have just cited actually applies to elected members of Parliament, so I thank you. I believe that members of the public are allowed to have whatever opinion they want.

Mr. Guy—

Mr. John Yakabuski: He's the Liberal campaign chair, an absolutely partisan—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. The floor is yours, Mr. Del Duca.

Mr. Don Guy: No, I'm actually a private citizen.

Mr. John Yakabuski: You're here as the former Liberal campaign chair.

Interjection.

Mr. Steven Del Duca: There's a question on the—

Interjections.

The Chair (Mr. Shafiq Qaadri): Thank you. Gentlemen, please.

Mr. Steven Del Duca: Chair?

Mr. Don Guy: So are you going to bully private citizens? They can't hold opinions any longer?

Mr. John Yakabuski: I resent anyone coming in—

The Chair (Mr. Shafiq Qaadri): Gentlemen.

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Mr. John Yakabuski: —to question the motivation of members of this committee—

Mr. Rob Leone: We're trying to get the truth.

Mr. John Yakabuski: Our attempt to try and get the truth—

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Del Duca?

Mr. Don Guy: You are trying to prevent the truth from getting out, which is why you're doing all the talking.

Mr. John Yakabuski: You're trying to ensure that you had electoral victory in the Mississauga and Oakville areas in 2011.

Mr. Steven Del Duca: I think there was a question, but I'm not sure how much time is now left, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Ten seconds.

Mr. Steven Del Duca: Ten seconds. I think it's evident that there's a tonne of defensiveness coming from the members opposite, starting with their allegations against the independent Chair and the Clerks' office earlier this morning.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca.

I now offer the floor to the PC side. Just before I do so and begin your time, since there have been a number of discussions about rulings of the Chair, procedure questions that are allowed to be asked etc.—and I do appreciate that members want to pursue particular lines which have been contoured by the Chair—I would offer to all members at a point later today a procedural briefing to be conducted by members of staff on the parliamentary procedure, the foundation of the legal ruling, to once again assure the committee that any rulings that are emanating from this chair are from only procedural motivations and no other. So if members would like to avail themselves of that, that briefing is available to them.

Mr. Gilles Bisson: But it does serve a useful purpose, Chair.

The Chair (Mr. Shafiq Qaadri): I'll ask that again later on when we reconvene, perhaps post-lunch, perhaps at the end of the day.

Mr. Fedeli, your full time begins now.

Mr. Victor Fedeli: Thank you, Chair.

When Brad Duguid, the energy minister, was here at the justice committee, he told us that he received a call that informed him the gas plant in Mississauga was going to be cancelled. He said, "They"—whoever "they" are—"advised that they were planning on making an announcement...." You had earlier said you were the announcement co-ordinator, so I presume "they" was going to be you, "making an announcement to cancel" ... "Mississauga.... I advised them, 'You know that I'm not in favour of doing that.'"

So it's obviously not a Ministry of Energy decision that was made here. I understand you said it was the Premier's sole decision, but you also said, from time to time, you "float ideas." Was one of the ideas that you floated cancelling the Mississauga gas plant? I know you said you did not make the decision, but were you involved in the idea, the discussions?

Mr. Don Guy: Sorry, where did I say, from time to time you float ideas?

Mr. Victor Fedeli: I wrote it down, "float an idea." You were answering Mr. Del Duca's question.

Mr. Don Guy: In a campaign context?

Mr. Victor Fedeli: Was it your idea?

Mr. Don Guy: Sorry, Mr. Fedeli, that's not the way we do our campaigns.

Mr. Victor Fedeli: I'm asking you then, were you involved in the discussions? I know you've said you did not make the decision. Were you involved in the discussions, the idea, the debate about cancelling the gas plant in Mississauga?

Mr. Don Guy: Well, the decision was made by the Premier.

Mr. Victor Fedeli: I understand the decision was made by the Premier. I'm not asking you about that. I'm asking you about the idea and the discussion.

Mr. Don Guy: The idea and the discussion. The idea was in the Premier's head before the campaign started, as I think he's testified at this committee. He thought we had potentially got it wrong. He heard from candidates—

Mr. Victor Fedeli: Were you involved in the discussion about cancelling the gas plant in Mississauga?

Mr. Don Guy: Was I involved in the discussion? Well, the decision was made by the Premier.

Mr. Victor Fedeli: I understand the decision was made by the Premier. This is a reasonably simple question. Were you involved in the discussion to cancel the gas plant?

Mr. Don Guy: What I'm having a challenge with is, how are you framing "the discussion"? I don't want to parse words, but what do you mean by "the discussion"?

Mr. Victor Fedeli: When people sat around on the bus and talked about cancelling the Mississauga gas plant, were you part of the discussion?

Mr. Don Guy: I wasn't on the bus.

Mr. Victor Fedeli: Were you part of the discussion on the phone? Did you have discussions in advance of the cancellation of the Mississauga gas plant?

Mr. Don Guy: We had, I believe, one or two discussions on the phone with the Premier where he indicated

he was getting ready to make a decision, and was making a decision—

Mr. Victor Fedeli: I understand it was his decision. I'm talking about the original idea and the discussion.

Mr. Don Guy: —with respect to the Mississauga gas plant. I was part of the discussions where the Premier indicated he was getting ready to make a decision, and that he had made his decision and he asked me, as campaign director, to deploy the announcement at the earliest possibility.

Mr. Victor Fedeli: Was there a discussion about the amount, the costs that would be involved in cancelling Mississauga?

Mr. Don Guy: There was a sense that outright cancellation, which was your party's policy, would be much more expensive and a worse value for the taxpayer than the relocation policy that he ultimately decided on and that we announced in the campaign.

Mr. Victor Fedeli: So did you know how much it was going to cost to cancel Mississauga?

Mr. Don Guy: No, because there had been no discussion with the proponents of that plant.

Mr. Victor Fedeli: So you cancelled it with absolute-ly no knowledge or concern of the cost.

I'm going to turn it over to Mr. Leone before I suggest that it's absolutely no wonder now why Liberals continue to raise taxes when you do things like that.

Mr. Steven Del Duca: And win elections.

Mr. Victor Fedeli: "And win elections." Thank you very much. I think Mr. Del Duca's comment just answered it all—

The Chair (Mr. Shafiq Qadri): Thank you—

Mr. Victor Fedeli: I'm not finished, Chair. That is exactly the nub of this. "We win elections by making expensive decisions when we don't know the costs, and we need to raise taxes"—

Interjections.

Mr. Victor Fedeli: You've finished saying that. You've said it all. You've got to the nub of this whole committee today. "We win elections." Thank you very much. I'll turn it over now. Thank you.

The Chair (Mr. Shafiq Qadri): Mr. Leone.

Mr. Rob Leone: I think my colleague Mr. Fedeli is entirely correct: We have heard it all today. This is about winning elections, hiding the truth from the people of Ontario at any cost. That's what we've been doing for the last few months: exposing this kind of scandal to the people of Ontario.

You've just confirmed, Mr. Del Duca, what we have been saying for months, which is the fact that we've wasted hundreds of millions of dollars of taxpayer money, only to put the Liberal Party in power—completely unacceptable.

Mr. Don Guy: Was that a question, Mr. Leone?

Mr. Rob Leone: That wasn't; I was directing it to Mr. Del Duca.

I have a question for you, though. Are you part of Premier Wynne's campaign team?

Mr. Don Guy: No.

Mr. Rob Leone: We have a Globe and Mail report from April 26, 2013, that suggests, “An official for Ms. Wynne, meanwhile, played down any change in plans. ‘Tom Allison was and is the campaign manager and Don Guy was and is a part of the core campaign team,’ the official said.” So you’re saying that’s incorrect.

Mr. Don Guy: That is no longer correct.

Mr. Rob Leone: “No longer correct”? When did that change?

Mr. Don Guy: I think the circumstances were outlined in the article as well. There was a discussion about me returning as campaign director or in some leadership role. Because of my responsibilities in another jurisdiction—I was living there—because I think your folks were beating the drums for a campaign in the spring, my advice to the Premier and her campaign team was to move on, that I wouldn’t be able to be part of it. I believe she has a new team of very capable individuals in place, and they’ve done exactly that. They’ve moved on.

Mr. Rob Leone: My colleague Mr. Fedeli asked you a question about what the numbers were in terms of how much these cancellations were. In the lead-up to the last campaign, you’re categorically stating that you had no idea what those numbers would be. Is that true?

Mr. Don Guy: It wasn’t my job. My—

Mr. Rob Leone: It wasn’t your job to produce a fiscal projection that would show how your party would operate over the longer term? That wasn’t your job, to produce a fiscal plan that had a billion-dollar hole, with no numbers on these gas plant cancellations?

Mr. Don Guy: First of all, I would imagine the Premier had a sense of how he wanted to proceed with respect to the costs of the relocation when he made his decision.

The second point is, you guys said nothing about cost. You said nothing about cost—

Mr. Rob Leone: Mr. Guy, you’re the only party that would have known what this costs. You’ve never communicated any of that to anybody—

Mr. Don Guy: Mr. Leone, that makes no sense. Your party committed to the outright cancellation, and then after we made our announcement to do relocation, you took your leader three or four times to the site to say, “We are going to cancel this thing, kill it, kill it”—what was it?

Mr. Steven Del Duca: “Done, done, done.”

Mr. Don Guy: “Done, done, done.” Then after the election campaign was over, you continued to do that, and pounded away on the issues—

Mr. Rob Leone: I’m asking about your party, not about ours.

Dalton McGuinty and Kathleen Wynne, as the Liberal co-chair of that election campaign, had no idea what these costs were going to be. She made a commitment without knowing the cost. She had a hole in your fiscal plan. That’s what you’re saying to us today.

Mr. Don Guy: Sorry, what does this have to do with Kathleen Wynne?

Mr. Rob Leone: She was the co-chair of the campaign. It has everything to do with Kathleen Wynne. The reason why—

Mr. Don Guy: As I’ve already been asked and as I already indicated, she wasn’t aware of the announcement.

Mr. Rob Leone: The reason why it has everything to do with Kathleen Wynne is because if you look at this year’s budget, she hasn’t produced the numbers on the out-years. Her fiscal plan has no numbers. It has no end point. We have no idea how she’s going to balance the budget. It’s the same process that you had committed during that campaign. It’s the same thing that we’re seeing now from this government: no numbers, hiding the truth from the people of Ontario at a cost of hundreds of millions of dollars. That’s the modus operandi of your party.

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Mr. Don Guy: Let me just guess how your party would balance the budget: by cutting taxes. Is that right?

Mr. Rob Leone: No, it’s by cutting waste. It’s by saying—

Mr. Don Guy: By cutting taxes.

Mr. Rob Leone: —you wasted billions of dollars on this gas plant scandal—

Mr. Don Guy: Is that how you’re going to balance the budget?

Mr. Rob Leone: —you wasted billions of dollars on eHealth. You come here and say that this is what you were going to do. You don’t actually even know what your own party is going to do and you’re coming here to tell us what we are doing.

Mr. Don Guy: I don’t have that responsibility any longer, Mr. Leone. So if you want to talk to people about what’s in the current budget or if you want to talk to people about what the next campaign is going to be about—

Mr. Rob Leone: I want to talk about what’s not in it, actually.

Mr. Don Guy: —then you should call those people, because I don’t have that responsibility. I can’t speak knowledgeably to that.

Mr. Rob Leone: But the problem is, we don’t have any idea—

Mr. Don Guy: I’m sorry, why are you using your time when I’m here to talk about whatever I was doing with my time—

Mr. Rob Leone: You made a decision to cancel plants without knowing the cost. That’s what you say.

Mr. Don Guy: Pardon me?

Mr. Rob Leone: You made a decision, with the campaign team—

Mr. Don Guy: No, I didn’t make a decision. The Premier—

Mr. Rob Leone: —in concert with Dalton McGuinty about how much—

Mr. Don Guy: Mr. Leone, the Premier made the decision in his capacity as leader of the party based on what he was hearing from his local-area candidates and caucus reflecting the views of their constituents—the same

message that your leader heard and your candidates heard, and that was reflected in your policy to cancel.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Leone. The floor is now yours, Mr. Bisson.

Mr. Gilles Bisson: I've got a couple of questions, just quick ones. Were you in any way involved in the decisions around not releasing the documents to the estimates committee last summer?

Mr. Don Guy: Sorry?

Mr. Gilles Bisson: Were you in any way part of the decisions not to release the documents requested by the estimates committee back last May, last June?

Mr. Don Guy: No, no, no. No, absolutely not.

Mr. Gilles Bisson: Did you at any time have any conversations with anyone within the government, either the Premier's office or with the Minister of Energy or anybody else connected to the government about the non-release of documents?

Mr. Don Guy: I believe I heard about it from the media, actually.

Mr. Gilles Bisson: I ask you the question again: Were you involved in any conversations with anybody within the Ontario government about not releasing the documents requested by the estimates committee?

Mr. Don Guy: I heard about the decision from the media, the same as, I guess, a lot of other folks.

Mr. Gilles Bisson: Yes or no. Were you involved in any discussions in relation to the non-release of documents?

Mr. Don Guy: No.

Mr. Gilles Bisson: No. Thank you.

The second question: Were you at any time involved in any kind of discussion in order to try to influence the Speaker in his decision?

Mr. Don Guy: No.

Mr. Gilles Bisson: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Mr. Tabuns?

Mr. Gilles Bisson: I got it right in there.

The Chair (Mr. Shafiq Qaadri): The previous question was out of order but executed with such finesse that it slipped by. Mr. Tabuns?

Mr. Peter Tabuns: Mr. Guy, you've got a long history of running campaigns. You are seen as a very capable and skilled campaign manager. I say that, disagreeing with your politics but admiring technique.

You're not credible as an errand boy. "I just implemented the Premier's decisions." "Dalton McGuinty was the campaign manager in 2011." It doesn't make any sense to me at all. He was thinking about cancelling this plant. He didn't come to you and say, "What are the political ramifications?" You didn't say to him, when he started mentioning it, "This is going to have an impact, positive or negative?"

Mr. Don Guy: We didn't think it was going to have that much of an impact on the election. As it turned out, it didn't.

Mr. Peter Tabuns: Well, two weeks—

Mr. Don Guy: The outcome of the election—whether we would have won those seats, which we did, or whether we would have lost those seats, which we did, it had no impact on the outcome of the election. At the end of the day, there was a Liberal minority victory.

Mr. Peter Tabuns: Yes, but two weeks before this decision, you were all in a very tight race; there's no question. Going back to the polling from the fall of 2011, it was a tight race, and as campaign manager you didn't think through the political ramifications? That doesn't make any sense to me.

Mr. Don Guy: Sorry, I don't understand what you mean by "didn't think through the political ramifications."

Mr. Peter Tabuns: You could be portrayed as potentially blowing large volumes of money. The Toronto Star at the time was saying it could be up to a billion dollars in cost. This was a very big cost. You had these candidates in southwest GTA who were pressing very hard for this to get killed off. You're saying that you had no political observation on this to Dalton McGuinty. It was entirely his decision.

Mr. Don Guy: This comes back, again, to how we do campaigns versus how others do campaigns, and I've been exposed to how others do them in a variety of forms. I understand that most political consultants will tell you that you should poll a target audience, determine the things they want to hear you say, and target your message accordingly, and that policy should be driven by those concerns. We learned a long time ago that Dalton McGuinty is at his best not when he's provided with that kind of advice but when he's guided by his inner star and what he thinks is the right thing to do.

Our campaigns and our platforms have been based around where the Premier wants to take the province and what he thinks is the right thing to do. Again, as I indicated in my opening statement, I think one of his strengths—and I realize it has been controversial with the opposition parties—is that upon reflection, if he thinks he needs to change course and do something different because it's the right thing to do, he listens and he acts. I think that's in the best spirit of democracy and it is a big part of what attracted me to his leadership and his agenda and what it has accomplished.

I'm not going to tell you something that—

Mr. Peter Tabuns: Mr. Guy, I think you've answered my question. Even though I don't accept that answer, I think you've given me the information you're going to give me.

There was all kinds of upset with the people of Mississauga prior to a building permit being issued, at a time when it would have been very inexpensive to cancel this plant. Mr. McGuinty certainly wasn't guided by his star until he was in the middle of an election, where he had candidates who were foaming at the mouth that this was a huge problem and action had to be taken pronto. It doesn't make any sense.

In fact, in some ways, if he had all this information from his candidates and from the communities prior to a

building permit being issued, he's on the hook personally for this huge miscalculation. He waited until the last moment—until, as you said earlier, the run-up to the all-candidates' debate, the leaders' debate on television—to make this decision. He wanted to have enough room to make sure of that. We got stuck with the bill. I can't accept—

Mr. Don Guy: I think, regardless of what the outcome of that election was, based on the positions of all three parties, there was going to be a bill. Premier McGuinty's decision led to a much smaller bill, with better value for the taxpayer, than the relative positions of your party, Mr. Tabuns, and of the PCs, and I think that's a positive outcome.

Mr. Peter Tabuns: Mr. Guy, I do have to note, too, that Andrea Horwath made it clear when she was asked about this matter by the media that she said she would not make a decision on cancellation without seeing the costs. And that, in fact—

Mr. Don Guy: So she wasn't in communication with her candidates who were at the doors, promising to cancel it, basically in the same words as Tim Hudak: "Done, done, done"? So they were just freelancing?

Mr. Peter Tabuns: I have to tell you, I've heard lots of interesting things from candidates from a variety of parties at doors—

Mr. Gilles Bisson: I heard Mitzie was the champion of subways.

Mr. Peter Tabuns: Yeah. I've been following Mitzie for years, and, to tell you the truth, she hadn't been a big person who was leading the subway charge.

The other question—

Mr. Don Guy: Sorry, I wasn't involved in that one, so—

Mr. Peter Tabuns: We believe you weren't involved.

The prorogation of the Legislature: When I asked you earlier about Dalton McGuinty's decision to leave, you told me about a longer history of discussion, but, in fact, that was his leaving. The prorogation is another matter. There's no question that there were emails circulating prior to the prorogation. The thought of your party going through this committee was something that people wanted to avoid—

Mr. Don Guy: No. Sorry, that's not true.

Mr. Peter Tabuns: —the documents were coming out. I think, frankly, that Laura Miller's testimony was very important in saying that prorogation ramped up dramatically once those documents were coming forward. You were called in for that?

Mr. Don Guy: Mr. Tabuns, I appreciate the question, but your contention is just not true. One of the questions that the Premier asked, in contemplation of his announcement that he was retiring and proroguing the Legislature, was: Will that motion survive? Will it come back when Parliament resumes? He wanted to make sure of that. As you know, it did. That's why we're here today. That was communicated widely at the time. So the notion that he prorogued to avoid something is just absolutely false.

1050

Mr. Peter Tabuns: I find that hard to believe. I find it hard to believe that, facing months of inquiry into this scandal, with the potential that there might have been an election with the budget that just came forward—that it made political logic from your end to try and shut things down so that the scale of the problem would not be fully apparent by the time the election came.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Don Guy: You know, Mr. Tabuns, the thing about Premier McGuinty, and it was part of the exhilarating part of working with him, is that he defies political logic and he makes decisions based on what he thinks is the right thing to do. The interesting thing in this context—and we are here today, which is a testament to exactly that—is that he wanted to make sure that, if he was going to prorogue, this activity would be able to continue. As you know, that was communicated at the time.

Mr. Peter Tabuns: Go ahead.

Mr. Gilles Bisson: Do you accept any responsibility in either the decision of the gas plant cancellation or the withholding of the information to the estimates committee that was requested? Do you accept any responsibility?

Mr. Don Guy: Do I personally accept responsibility—

Mr. Gilles Bisson: In your role as campaign chair and former chief of staff.

Mr. Don Guy: —for things that were beyond my scope and beyond my control? No.

Mr. Gilles Bisson: Do you have any regret?

Mr. Don Guy: Do I have regret?

Mr. Gilles Bisson: Do you have any regret about all of this? Do you think that maybe—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. That question will have to remain rhetorical.

Mr. Del Duca, the floor is yours.

Mr. Steven Del Duca: Thanks very much, Mr.—

Mr. John Yakabuski: A point of order, Mr. Speaker, if I may.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much, Speaker, or Mr. Chair; I was promoting you inadvertently.

The Chair (Mr. Shafiq Qaadri): We look forward to that, Mr. Yakabuski. Thank you.

Mr. John Yakabuski: In an earlier exchange, the honourable member Mr. Del Duca made an accusation against myself as another honourable member of this committee. When I was questioning the statements by Mr. Guy with regard to his impugning the motives of members of this committee, he made a statement that I impugned the motives of you as Chair in the discussion surrounding the ruling on Mr. Bisson's motion.

Mr. Chair, I put it to you and to this committee that at no time did I ever challenge the motivations or the impartiality of you as Chair. I questioned the accuracy and the correctness of your decision, which other members of this committee did as well, but for Mr. Del Duca to accuse another member of this committee of questioning and impugning your motives as Chair of this

committee, I say, is out of order and is worthy of a withdrawal on the part of Mr. Del Duca.

The Chair (Mr. Shafiq Qaadri): I thank you, Mr. Yakabuski. We certainly appreciate the flattery.

Mr. Del Duca, the floor is yours.

Mr. Steven Del Duca: Thank you very much, Mr. Chair. So, in my final couple of questions for our witness today, I want to talk a little bit about some of the context, what was taking place back in the fall of 2012, that hasn't come up an awful lot today. I remember that particular time very well. It was the first number of days after I was sworn in as a member of the Legislature. From my recollection as a brand new MPP, there was an awful lot of mudslinging. There were a lot of threats made by the opposition.

Many witnesses who have come before this committee have referred to this as a "witch hunt" with respect to the honourable member Chris Bentley, the former member Chris Bentley. In fact, there was no doubt in my mind: What the opposition was doing at that time was trying to destroy a man's integrity and destroy his career.

For example, in September, the PC member from Simcoe-Grey, Mr. Wilson, said of Mr. Bentley that he knows very well—and this is from Hansard—"that he could lose his licence to practise law. He knows that he could be expelled from the Law Society of Upper Canada. He knows that he may be called before this House to deliver a humiliating apology." The member from Cambridge, Mr. Leone, said—joked, in fact—in the House, "The minister's entire professional career is on the line.... he's risking it all: his legal career, his leadership bid and his credibility." That's a quote from Hansard as well.

Frankly, Hansard itself doesn't capture the jail threats, the heckles, the endless and mean-spirited attacks that were hurled at Chris Bentley by opposition members in the chamber—frankly, all with smiles on their faces.

Mr. Gilles Bisson: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson?

Mr. Gilles Bisson: I just want to make it clear that New Democrats never made any such assertion against Mr. Bentley, to be clear.

The Chair (Mr. Shafiq Qaadri): Thank you. While very noble, that's not a point of order.

Mr. Del Duca?

Mr. Steven Del Duca: So from what we all observed during that particular period of time, do you believe that the opposition was ever truly interested in access to records? Or were they out to score cheap political points?

Mr. Gilles Bisson: Can I answer that for you?

The Chair (Mr. Shafiq Qaadri): We appreciate your offer, but thank you.

Mr. Guy.

Interjection.

The Chair (Mr. Shafiq Qaadri): That's for you to determine, Mr. Yakabuski.

Mr. Guy, the floor is yours.

Mr. Don Guy: I think that the pattern of behaviour that you're describing is consistent with what we see

from Republicans in the States that I referenced earlier, which is "search and destroy"; you do whatever you need to do to drag the other team down. Unfortunately, the truth of the matter is something they choose to drive by, and I guess that's regrettable.

Mr. Gilles Bisson: Just on a point of order—

The Chair (Mr. Shafiq Qaadri): Mr. Bisson.

Mr. Gilles Bisson: With all due respect to the Chair, this member is impugning motive, which is against the rules of the committee and the rules of the assembly. How can you ask a question imputing motive and not be allowed by the opposition to ask questions about their role with the Speaker?

Mr. Steven Del Duca: It's not impugning motive to quote from Hansard. If you're embarrassed about what you said, that's not my fault.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. I will simply—

Mr. Gilles Bisson: Hey, I never said that.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen.

Interjections.

The Chair (Mr. Shafiq Qaadri): Gentlemen, I would just offer a reset and I would invite all members to please observe parliamentary decorum. Please continue, Mr. Del Duca.

Mr. Steven Del Duca: How much time, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): About six minutes.

Mr. Steven Del Duca: There has actually been a lot of discussion, as I'm sure you're aware, about requirements of members of government and their staff with respect to retaining and archiving records. We've heard from at least one witness, possibly more. I'm going to try to take you back a number of years to your experiences when we first won government back in 2003 and came back into power. There has been a lot of discussion, like I said, about how governments should be retaining records—an important discussion, no doubt—but other witnesses, at least one other in particular, have described witnessing first-hand back in 2003 as the Ontario Liberals were transitioning back into government that there was a long lineup of shredding trucks sitting outside as the outgoing PC government were vacating their offices. I'm just wondering if you had any experience from your time, coming in in 2003, of what kind of records were kept, the impression you had of the practices of the former PC government as they were leaving office.

Mr. Don Guy: Well, I can tell you, when we walked in, the place was barren, picked clean. The only thing left by the PCs was the dust bunnies that were rolling around in the offices. Again, it's "say one thing; do another," I guess.

Mr. Steven Del Duca: I'm done with questions. I'm wondering, with the time that's left, if you had anything else that you'd like to add for the committee today.

Mr. Don Guy: I want to thank the committee for the invitation and, again, for the patience that you displayed while I was working out west. I appreciate the work that

you do. I'm also, after having spent some time with you here this morning, even more firmly convinced that the decision the Premier made with respect to the relocation of the Mississauga plant in the campaign, and the one that predated the campaign, which was the one taken in government with respect to Oakville, were the right decisions. I haven't heard anything here today that would dissuade me that the choice to relocate and get the value of the electricity delivered against those contracts was obviously superior to the alternatives offered by the other two parties, which were outright cancellation. I haven't heard anything in terms of fleshing out those alternatives or anything with respect to how it would have been done differently.

I guess I leave somewhat heartened that we made the right choice, that the Premier made the right choice, and it gives me some more hope for the future, so thank you for the opportunity.

Mr. Steven Del Duca: Thank you very much. Thanks, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca, and thank you, Mr. Guy, for your spirited presence today. I'd also like to thank all members of the committee for abiding by the parliamentary and procedure rules, such as they are, pending challenges that may come in the future.

We will now recess for 10 minutes.

The committee recessed from 1100 to 1120.

MR. JOHN BRODHEAD

The Chair (Mr. Shafiq Qaadri): Colleagues, the meeting is now back in session. I invite our next presenter to please come forward: Mr. John Brodhead, who will be sworn in.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. John Brodhead: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Brodhead. Five-minute opening remarks begin now.

Mr. John Brodhead: Good morning, everyone. Thank you for inviting me to appear. Sorry if my voice is a little shaky—I'm a little bit nervous—so I apologize in advance. I really appreciate getting invited and trying to help the committee's work in any way I can with my knowledge, having participated in some of these discussions.

For the past seven years, I worked in the Ontario government, six of those in the office of former Premier Dalton McGuinty and one of those at Metrolinx, the regional transportation agency for the GTHA. In my time in the Premier's office, I served in a variety of roles, starting as a policy adviser and, most recently, acting as deputy chief of staff for policy and cabinet affairs. I left the provincial government in February.

As it relates to this committee's work, I have had the following interaction with the files being discussed: First of all, I had no significant involvement in the energy file prior to January 2012. When I returned to the Premier's office after a paternity leave in late 2011, I assumed the role of executive director, which I held until taking on the deputy chief of staff role in May 2012. In both roles, I had high-level involvement in the energy file, though also carriage of other policy areas as well.

During the year 2012, I kept in touch with how negotiations were proceeding on relocating the two plants, primarily through Minister Bentley's office. My role was to make sure things were moving forward, and that included, from time to time, updating the Premier on major developments.

The Premier's office plays a variety of roles when it comes to policy files. In some cases, we engage in details, working closely with civil servants and political staff. This usually occurs when we have a long history with a file and have had time to get to know its details. This would be the case for me in such areas as poverty reduction, early learning, and transportation and infrastructure.

At other times, we are more like air traffic controllers, making sure that things are moving and that all the pieces of the system are working together, but leaving the details to the minister and civil service. On the energy file, I acted more in that capacity, as an air traffic controller, as I was also dealing with a variety of other policy files.

During the year 2012, and in particular after I become deputy chief of staff, I had to oversee many of the government's policy files. At any one time, this could mean 10 to 20 ongoing policy issues, from health care reform to economic development to the issue of youth violence that reared its head in the summer of 2012. These meant busy days and reliance on experts outside the Premier's office to provide us with detailed advice and information.

On the issue of the cost of the two plants, the key point I would like to leave you with is that we got the numbers we provided publicly from the negotiators, the agency responsible and the Ministry of Energy. These were complicated, fast-moving negotiations, and we had to rely on those on the front line to provide us with those details. As you will see from some of the emails in the package I provide you, we received these numbers from the experts in the civil service and our external agencies.

On the issue of document retention, which has come up before this committee, and as the former Premier stated in his appearance, we were not properly trained in document retention. That said, I did keep those documents I felt were unique to me—my briefing notes to the Premier—and have provided those to the government for proper archiving.

As you can see from the 465 pages of emails on the gas plants that were provided to the committee, these notes are transitory and duplications, hence why I did not keep them.

I really look forward to your questions and thank you for allowing me to come and help you in whatever way I can.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Brodhead. The floor is to the NDP: Monsieur Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Chair, and thank you, Mr. Brodhead, for being here today.

In your role as overseeing Vapour and Vapour-lock files, were you at any point drawn into document assembly or preparation?

Mr. John Brodhead: Are you referring to for the estimates committee?

Mr. Peter Tabuns: For the estimates committee and then for the justice committee.

Mr. John Brodhead: That was not my area of responsibility, so I was not drawn into it. There were obviously conversations happening in the Premier's office, but I was not involved in those in any detailed way.

Mr. Peter Tabuns: Were you part of those discussions in the Premier's office about these files?

Mr. John Brodhead: About the documents in the estimates committee? There were meetings that I was involved in. We were aware that the minister was dealing with a challenging set of circumstances: his obligation to get the committee what it needed and, at the same time, protecting the commercial interests of our negotiations at the time.

Mr. Peter Tabuns: Who was part of these ongoing discussions in the Premier's office—obviously yourself and obviously the minister. Who else?

Mr. John Brodhead: The minister wouldn't have been there, no. There were—

Mr. Peter Tabuns: No? Who was there?

Mr. John Brodhead: My guess would be, someone from the government House leader's office and other members of the senior staff. I don't recall specific meetings, but—

Mr. Peter Tabuns: Were minutes kept of these meetings?

Mr. John Brodhead: Not that I'm aware of.

Mr. Peter Tabuns: Was there anything in writing about these meetings?

Mr. John Brodhead: I don't recall. It's possible we got a briefing note from the government House leader's office on that in advance of the meeting to set out some of the issues the minister was going through, but I don't recall specifics.

Mr. Peter Tabuns: You were well aware of what we had asked for as a committee, I'm assuming.

Mr. John Brodhead: Yes.

Mr. Peter Tabuns: Why was it that, even though we had gone through the discussion in estimates, adoption of a resolution in the House, we were not given documents? What we were given was heavily redacted and heavily parsed.

Mr. John Brodhead: I think the issue that the minister was trying to deal with at the time was making sure that the committee got the documents it needed in the fastest amount of time, while balancing that with the

need to protect the sensitivity of some of the documents that might impact the commercial negotiations. As we've heard from other people testifying in front of this committee, there was concern that releasing those documents at that time would seriously impact our negotiations.

Once the negotiations finished on the Mississauga plant, my understanding is, those documents were released almost immediately. I think that was the challenge that the minister was struggling with at the time.

Mr. Peter Tabuns: Okay.

I'm not sure if this has been provided to the Clerk. There is an email from Dave Phillips in the House leader's office to Laura Miller, yourself, Neala Barton and others in the Office of the Premier: "Summary of Options, Standing Committee on Estimates—Gas Plants Motion, July 4, 2012." Do you have a copy of that?

Mr. John Brodhead: Yes.

Mr. Peter Tabuns: That's great. On page 2 of the memo, we have "Strategic Goals," and the middle bullet is, "Successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues management impact on the government."

I would have thought your goal would have been to be transparent and thorough in provision of documents to the committee.

Mr. John Brodhead: As not the author of this document, I don't want to speak to the details. From my perspective, my role was to work with the minister and the minister's office to make sure that the negotiation was completed as best as possible. That was my goal in those discussions.

Mr. Peter Tabuns: You may be aware that this strategic goal of managing the timing to minimize the negative media for the Liberal government was seen by us—and it continues to be seen by us—as covering up what was really going on. We don't feel that we were given the information that we asked for when we asked for it.

Did anyone in this group who received this email at the time say, "Hey, we've got problems here. This shouldn't be our approach"?

Mr. John Brodhead: I don't recall the specific discussion. What I do know is, personally, on the advice of others, I was worried about documents going out that could compromise our position in negotiations.

1130

Mr. Peter Tabuns: Did you brief any cabinet ministers on the files for Vapour and Vapour-lock?

Mr. John Brodhead: Besides the Premier?

Mr. Peter Tabuns: Yes, besides the Premier.

Mr. John Brodhead: No, not to my recollection.

Mr. Peter Tabuns: Was Dalton McGuinty aware of your approach to releasing these files?

Mr. John Brodhead: That was not a conversation I had with him.

Mr. Peter Tabuns: So you personally didn't have that conversation. You can't speak to that.

Mr. John Brodhead: I can't speak to that.

Mr. Peter Tabuns: Did the Premier generally pay attention to what was going on in the Legislature? Mr. Morley has previously said that he kept himself well aware. Was that your experience as well?

Mr. John Brodhead: Yes, I would say that was my general experience, that he was fairly aware of what was going on.

Mr. Peter Tabuns: And, I'm sorry, were you involved in the Premier's office from the time that Kathleen Wynne came in?

Mr. John Brodhead: No. I left on the transition day—February 11, I believe it was.

Mr. Peter Tabuns: One of the documents we have, an email you sent to Laura Miller, said that you had updated "P" on FIT and Vapour-lock. I'm assuming "P" is the Premier.

Mr. John Brodhead: Yes.

Mr. Peter Tabuns: Okay. What did you tell him?

Mr. John Brodhead: At that time, as I recall, I had a phone conversation with him about—I believe that was at the conclusion of negotiations and the fact that here was the amount we were going to have agreed to, and then it was going to be public at some point in the near future.

Mr. Peter Tabuns: And what number did you give him?

Mr. John Brodhead: That was for Mississauga. I gave him \$180 million at the time.

Mr. Peter Tabuns: Okay. Where was that number from?

Mr. John Brodhead: I received that number from the Minister of Energy's office, who had received that from the OPA and the Ministry of Energy.

Mr. Peter Tabuns: Did you understand at the time that there was a lot more—

The Chair (Mr. Shafiq Qaadri): Just before you continue, Mr. Tabuns, with respect to press openness, I'd welcome you to stop filming their desks, and particularly Mr. Bisson's device.

You have the full time again, Mr. Tabuns.

Mr. Gilles Bisson: Sorry. It's only a Liberal document; he can do it.

The Chair (Mr. Shafiq Qaadri): It looks like Global News to me.

In any case, go ahead.

Mr. Peter Tabuns: I would just ask this question. I think Mr. Bisson has a question as well. Were you not aware that there would be a lot more costs than the \$180 million at the time?

Mr. John Brodhead: At the time, what I was aware of was the \$180 million. It's obvious that we quickly became aware of an additional \$10 million in the non-utility generation for Keele Valley, on which there was some confusion as to whether it linked.

Also, when we did the announcement, we included a page of other costs that were ones where the advice we'd been given was that they were repurposable costs, but subsequently the Auditor General determined that those should have been non-recoverable costs. At the time, those were the numbers that I had available to me.

Mr. Peter Tabuns: I'll pass to Mr. Bisson.

Mr. Gilles Bisson: I want to go back to this July 4, 2012, memo from Dave Phillips that's sent to Laura Miller, yourself, Neala Barton, Wendy McCann and Kevin Spafford. In this fairly lengthy document—do you remember receiving this particular document, first of all?

Mr. John Brodhead: I don't remember, but—

Mr. Gilles Bisson: But you were a part of it. You got it.

The point is, as we go through all of this, it's pretty clear that the entire tone of this particular memo is about how not to release the documents that were requested by the estimates committee. If we take a look at the first page, it talks about how the government House leader's office was involved in directing the government members to essentially filibuster the committee so that time would elapse before the House ended in the spring of that year. The Chair would possibly vote to defeat the motion, or at least vote to support the amendment that would hamstring the motion—essentially guiding principles: "We do have the ability to manage the manner of timing and release, and perhaps the final terms of the motion, as to achieve our strategic objectives."

It's pretty clear that there was a discussion going on between the House leader's office and yours about how to manage to release those documents. Is that fair?

Mr. John Brodhead: There was a discussion. I wouldn't characterize it as—my recollection isn't that it was reflective of this document, especially the perspective that I brought to it.

Mr. Gilles Bisson: According to your testimony and according to the testimony of others who appeared before you, the Premier's office was aware of what was going on within the Legislature, and what we see is a document that is clearly working to try to manipulate the release of those documents.

Mr. John Brodhead: All I can speak to, not being the author of this document, was my concern and what I brought to that discussion.

Mr. Gilles Bisson: And what was your concern?

Mr. John Brodhead: My concern was releasing documents during negotiations and the impact that could have on our negotiating position. That was my particular concern. I can't speak to the author of the document and their perspective.

Mr. Gilles Bisson: You're aware that when a court subpoenas documents, a court gets documents. You're aware of that?

Mr. John Brodhead: Yes.

Mr. Gilles Bisson: And are you aware that a legislative committee has the same powers?

Mr. John Brodhead: I know the minister was grappling with these issues very seriously.

Mr. Gilles Bisson: Well, it's pretty clear, according to these documents, that there was an attempt in order to manipulate how these documents would be released. To what degree were you involved in those discussions?

Mr. John Brodhead: Peripherally, if I pronounced that right.

Mr. Gilles Bisson: You called yourself an air traffic controller earlier.

Mr. John Brodhead: Yes.

Mr. Gilles Bisson: I'm a pilot. Air traffic controllers tell airplanes where to go.

Mr. John Brodhead: That's very good; I hope so.

Mr. Gilles Bisson: So were you telling staff where to go?

Mr. John Brodhead: Let me clarify—that's a good point. On air traffic control, I was the air traffic controller in a certain segment of airspace.

Mr. Gilles Bisson: That's right.

Mr. John Brodhead: Just to push this metaphor all the way, I was responsible for keeping on the negotiation side. I was not responsible for House strategy, so I would have been peripherally involved in those conversations.

Mr. Gilles Bisson: But it's pretty clear that you played a pretty central role to the discussion around the release of documents. I ask you again, on the record: What role did you play in making decisions within the Premier's office about releasing those documents?

Mr. John Brodhead: I would say I was involved in those conversations, and my perspective and the position I brought to the table was that we needed to take into consideration the impact of releasing those documents on the commercial negotiations at the time.

Mr. Gilles Bisson: And you were not driven by political considerations as trying to control the bad media that you were getting?

Mr. John Brodhead: That was not my position, no.

Mr. Gilles Bisson: The emails certainly point to the opposite. How do you explain that?

Mr. John Brodhead: Sorry, which emails are you referring to?

Mr. Gilles Bisson: Emails that were exchanged between Laura Miller, Mr. Don Guy and others within the Premier's office clearly indicate that you guys are trying to manage the message. Was that not the goal? Were you not trying to manage the media message that was coming out?

Mr. John Brodhead: You'll have to speak with people with more knowledge on the communications side of this.

Mr. Gilles Bisson: You were the air traffic controller, I remind you.

Mr. John Brodhead: In the other airspace.

Mr. Gilles Bisson: Were they flying blind over there?

Mr. John Brodhead: I would not say that, no, but I would point you to the people who had more knowledge of the communications, conversations, than I.

Mr. Gilles Bisson: To what degree did the Premier have a role to play in those discussions?

Mr. John Brodhead: I have no knowledge of him having—

Mr. Gilles Bisson: Did you ever discuss this with the Premier?

Mr. John Brodhead: Never.

Mr. Gilles Bisson: In regard to the release of the documents to the estimates committee?

Mr. John Brodhead: Never.

Mr. Gilles Bisson: Did you have any such conversations with Don Guy?

Mr. John Brodhead: Never.

Mr. Peter Tabuns: Just to go back: I had asked you about your briefing of ministers.

Mr. John Brodhead: Yes.

Mr. Peter Tabuns: Did you brief any ministers on this?

Mr. John Brodhead: Not that I recall.

Mr. Peter Tabuns: You were in the Premier's office running this file and you were never asked by any minister for a briefing?

Mr. John Brodhead: No; that would traditionally be the responsibility of the minister and the minister's office responsible. That's not any file—that's not normal. In my policy files, I don't have a lot of experience with going and briefing ministers on other ministers' files.

Mr. Peter Tabuns: Are you ever called in to brief a minister on a file that's going on a walk-around for cabinet, for instance?

Mr. John Brodhead: It has happened in the past, but not on this particular issue. I was not, no.

Mr. Peter Tabuns: Can you tell me why it is that a number of staff from the Premier's office that we've had before us have in fact told us they were familiar with the Archives and Recordkeeping Act and—

Mr. John Brodhead: Sorry, they were or were not?

Mr. Peter Tabuns: They were—and knew that there is a schedule of documents they could and couldn't delete. Did no one ever talk to you about this legal responsibility you had?

Mr. John Brodhead: I was not briefed or trained in proper document retention in my time there.

Mr. Peter Tabuns: Did you have an intuition about it?

Mr. John Brodhead: I did have an intuition, which is why I kept the briefing notes that I wrote to the Premier, because I felt that those were unique to me, and so I kept those and archived them. The government has them to archive.

Mr. Peter Tabuns: Did any of these briefing notes touch on Vapour and Vapour-lock, on the gas plants issue?

Mr. John Brodhead: Two of them peripherally, and the committee was provided those on June 27, I believe, as part of a request, but very peripherally.

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Mr. Peter Tabuns: If you had carriage of these two files, why is it that you were only peripherally involved in briefing?

Mr. Gilles Bisson: That's the question.

Mr. Peter Tabuns: It just strikes us as very strange, given that there's a division of labour. You're given these files—these are very hot files—and yet—

Mr. John Brodhead: Which particular briefings are you—

Mr. Peter Tabuns: Briefing the Premier on Vapour and Vapour-lock.

Mr. John Brodhead: And I did brief the Premier. As the July 9 email says, I did brief him on Vapour-lock—on the Mississauga plant.

Mr. Peter Tabuns: I saw that, but I don't understand why you would be peripheral on this.

Mr. John Brodhead: All I'm saying is, on the legislative strategy and communications, I was at conversations about that, but I am not the lead on that core piece. I was the lead on the policy piece of this file.

Mr. Peter Tabuns: So you dealt with numbers and energy policy rather than political strategy? Is that what you're saying to us?

Mr. John Brodhead: That was my focus, yes.

Mr. Peter Tabuns: You had briefing notes on Vapour and Vapour-lock in 2012, I'm assuming. We asked—we put in a freedom-of-information request—for all Vapour and Vapour-lock documents in the fall of 2012, and we were told that none existed in the Office of the Premier. Why?

Mr. John Brodhead: I don't recall ever writing a briefing note on paper on Vapour or Vapour-lock.

Mr. Peter Tabuns: Really?

Mr. John Brodhead: Let me expand a bit on that.

Mr. Peter Tabuns: Yes, please.

Mr. John Brodhead: Briefing notes, for me personally, were more traditionally used when I had a little more lead time and it was in preparation for a meeting. The fast-moving pace of this file led to more verbal and in-person briefings.

Mr. Peter Tabuns: But you've said to us that you had two briefing notes that peripherally touched on this that were turned over to this committee earlier in the summer—

Mr. John Brodhead: Right.

Mr. Peter Tabuns: —but they didn't show up when we put in a freedom-of-information request in 2012.

Mr. John Brodhead: I'm not sure why. I know one of them was from December. I'm not sure why they wouldn't have shown up.

Mr. Peter Tabuns: Hmm. Do you have a question?

Mr. Gilles Bisson: No, no. I was just saying, "Wow."

Mr. Peter Tabuns: Okay. Did Laura Miller have much interaction with you on this file?

Mr. John Brodhead: On Vapour and Vapour-lock, specifically?

Mr. Peter Tabuns: Yes.

Mr. John Brodhead: Yes. We had lots of conversations over the course of the year—was she there the whole year?

Mr. Peter Tabuns: Yes.

Mr. John Brodhead: When she assumed her position as deputy chief of staff—sorry, that would've been May.

Mr. Peter Tabuns: I'm not sure if this email is provided; in one of the emails we came across, she was directing people to focus on pushing the decision off of the party and on to government, saying the decision to cancel the plants was a government decision, not a political decision. Were you familiar with her carrying that line forward?

Mr. John Brodhead: I do remember that email, yes.

Mr. Peter Tabuns: Okay. So did you think that these cancellations were government or party decisions, political decisions?

Mr. John Brodhead: I think that in January 2012, when I came to the file, the decisions had been made, and it was my job to help implement those decisions.

Mr. Peter Tabuns: And were they seen as political party decisions?

Mr. John Brodhead: In my sense, they were seen as a traditional political commitment that the government then commits to keeping, and then it was part of my role to help execute on that commitment.

Mr. Peter Tabuns: Premier Kathleen Wynne has stated that these were political decisions. Do you agree with her?

Mr. John Brodhead: I think they were committed to in a political campaign, as many political platforms are. I think it's then the responsibility of the government to either decide to proceed or not with that commitment.

Mr. Peter Tabuns: I don't have a further question at this point, unless—Mr. Bisson?

Mr. Gilles Bisson: How much time do we have left?

The Chair (Mr. Shafiq Qaadri): Forty seconds.

Mr. Gilles Bisson: Forty seconds? We'll just let it go.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. To the government side: Mr. Delaney?

Mr. Bob Delaney: Thank you very much, Chair. Good morning, Mr. Brodhead. While I don't have too many questions to ask you, a lot of them are going to have a bit of a preamble, largely because one of the issues that we cope with here is a recollection of events that seem to come from an alternate universe. Hence, I'm just going to preface the question with—

Mr. John Yakabuski: We've heard a lot about alternate universes.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, I ask you to remain in this universe, please.

Mr. Bob Delaney: That, Chair, is exactly the reason that I made the remark: to make sure that we are indeed discussing the same version of events.

The first thing I'm going to talk to you about is some of the events in 2012. In terms of the Mississauga plant, our committee has heard that there was, of course, community opposition to the plant, beginning in the autumn and winter of 2010 and going through the spring and summer of 2011, during which time the proponent secured financing and began construction, over the objections of the community and of the city.

Mayor McCallion was here. She talked not merely about the health and environmental risks for Mississauga and Etobicoke, but she also noted that as the city had made a zoning decision several versions of the municipal plan ago, the OMB upheld the zoning of Mississauga as industrial/power plant.

As we moved into the 2011 election, I'm assuming you paid close attention to the policies and the commitments of all three parties, and you would know that there were secure commitments made by all three parties to

cancel the plant if they formed government in the fall of 2011.

Mr. John Brodhead: During the 2011 election, I had the great pleasure of being the wagon-master on the Liberal bus, which, if anyone has had that pleasure, is not particularly a policy role. It was very much focused on making sure the media had all the lattes and steak sandwiches they required, at any hour of the day. So I heard about it through being 24 hours a day with 12 of my closest friends at the time.

Mr. Bob Delaney: My colleague Mr. Bisson suggested, and I'll use his words, that you played a central role in the release of the documents on the cancellation of the gas plant. Did you play such a central role?

Mr. John Brodhead: No. When we think about the role of someone like myself in the Premier's office—we're on the receiving end. As you can see from many of my emails that the Ministry of Government Services handed to you, the minister's office, the ministry and the OPA were having a very intense and deep conversation. For us, it was receiving those numbers, asking questions where we could, but we did have to put our faith in the people who were on the front lines doing the negotiations and who had much more expertise in these areas than us, and me in particular.

Mr. Bob Delaney: To stay in the time that you served in government, in 2012, with the election then over and the government having been formed and, as all governments do, taking its platform and turning it into government policy—we know that all three parties had committed during the election to cancel the plant, but as the Liberals formed the government, it was our government's responsibility to implement our commitment to relocate both plants.

As construction had already started in Mississauga, it was, at the time, important to reach a deal to halt that construction as soon as possible. Were you concerned that the longer construction in Mississauga continued, the higher the sunk costs might rise?

Mr. John Brodhead: Yes, I think there was a lot of concern among all the people that I interacted with on this file that the longer the construction went on, the higher the sunk costs would be.

Mr. Bob Delaney: I'm going to ask your opinion on something. The Conservatives staged many news conferences and other events in front of the Mississauga site. There was, of course, no construction begun in Oakville, so there wasn't the same degree of photo op there. Even after the election, we saw the PC Party staging events at the Mississauga plant. From your perspective, did this political pressure from the opposition contribute to some of the difficulty of the negotiations that the government had with Eastern Power?

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Mr. John Brodhead: I don't think I was in the realm where that was impacting me on a day-to-day basis. I think the negotiations were very complex as it was. That didn't really come into the world of conversations I had at that time.

Mr. Bob Delaney: Many of the three and a half dozen witnesses to date have noted that what differentiated the government's commitment from that of the two opposition parties is that they said, "We're going to rip up the contract and cancel the whole thing," and we said, "Well, we're going to relocate it and see if we can get taxpayers some value and some electricity for having spent the money." What we do understand is that no matter who formed government, these two plants would cease.

Were you satisfied that the right approach was taken with respect to the negotiations with Eastern Power in Mississauga and with TransCanada Energy in Oakville?

Mr. John Brodhead: I think what I could say is, from the perspective of where I sat in terms of the negotiations, it was clear to me—and the advice we got—that it would have been more expensive to just cancel it, so we were very determined to get power from those negotiations. That was a core principle when I joined in January 2012: We needed to get power out of this to optimize these negotiations.

Mr. Bob Delaney: So the optimum cost would also come with relocation, which would actually get Ontarians some electricity from the plant instead of paying money for a cancelled contract.

To move to Oakville, and again just to avoid a little bit of revisionist history, the decision to relocate the Oakville plant was made well before the 2011 election. Is that correct?

Mr. John Brodhead: I believe it was made in 2010 when I was at Metrolinx.

Mr. Bob Delaney: Okay, then you might know some of this. In terms of the rationale for that decision, some of the testimony before the committee has said that there were serious issues with the siting of the plant, including, particularly in Oakville, the overtaxed airshed, the lack of a buffer zone to ensure the safety of residents, and close proximity to businesses, commercial establishments, homes and a school. As well, some of the testimony that we've heard said that when the long-term energy plan was updated in the summer and the early fall of 2010, it became clear that that plant was no longer required in the Oakville area because, very candidly, demand had changed. Also, at that time, a transmission solution from Bruce was also possible.

Just like Mississauga, we've heard from the Oakville community, including from Mayor Burton, that they had received commitments by both opposition parties to cancel the plants, and again the differentiation being that the government was saying, "We don't think cancellation is the appropriate way. We'd like to move them and actually get some power."

Does that encapsulate what you knew of the opposition's position on the Oakville plant?

Mr. John Brodhead: I think the kind of preface you used on the demand targets changing and all those pieces is consistent with what I heard when I came in in January 2012 and started to get up to speed on the file.

Mr. Bob Delaney: Former Deputy Minister of Energy David Lindsay, in that vein, testified about Oakville that,

to use his words, "Paying costs and getting no electricity would not be a very good business decision." Do you agree with that?

Mr. John Brodhead: That was the premise under which I was operating coming in in January 2012. I think it's safe to say that—and Deputy Lindsay was the deputy at the time when I came in, for a brief period, so I was taking my cue from those far more knowledgeable, such as Mr. Lindsay.

Mr. Bob Delaney: Well, on that subject, Mr. Lindsay, when he was here, also testified about the risks of ripping up the agreement, as opposed to trying to renegotiate it. He said that "if you have a contract and you don't honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure"—his words.

John Kelly from the Attorney General's office testified before us and said, "I'm fairly satisfied there would have been litigation" if the government and the OPA hadn't negotiated with TCE on an alternative plant.

He also said, "In my experience, after 40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk."

Under the circumstances, was the best way forward for the government to avoid litigation and try to reach a settlement on damages and to renegotiate for a new plant with TCE?

Mr. John Brodhead: That was the advice that we received at the time, that that was preferable. That was the principle under which we were operating: that that was preferable, based on the advice that we received.

Mr. Bob Delaney: Okay. Then just to encapsulate it: Given the choice of cancelling the contracts outright, walking away from them and paying costs, the government chose to renegotiate them. You asked for and received the best advice you could. The advice said to see if we could reach an agreement with the proponents without litigation, and that's the advice that you took. Correct?

Mr. John Brodhead: Yes.

Mr. Bob Delaney: Okay. In terms of the costs associated with relocating the plants, who would have provided you and your office with that information after the two deals were finalized? Do you recall?

Mr. John Brodhead: So, on both—and I have documentation on Mississauga that helps explain this a little bit. I personally and our office would have received that information from the minister's office, traditionally and primarily, and they would have received it from their ministry and the Ontario Power Authority.

There was an email sent to me from the chair of the OPA on July 17, saying, "\$180 million was the number we stood behind for Energy for Greenfield South; we are already on record ... as explaining that the \$10 million was a settlement of a NUG contract.... They total \$190 million, unless I'm missing something." That's from the chair of the OPA at the time.

While traditionally—and other emails that are in the package I circulated show the OPA sending the advice

through the minister's office. In this case, I did get a note from the chair of the OPA himself, but for the most part it would be from the minister's office, and they would receive it from their experts.

Mr. Bob Delaney: Okay. So then when the finalized deals were announced, the information that was costed by the OPA at the time was provided to the public.

Mr. John Brodhead: Yes.

Mr. Bob Delaney: Good. I'm sure you've heard some of the accounts of some of the other two parties about some of the costs associated with the relocations. Interestingly, they've never provided their numbers on what it would have cost to cancel the plants. Clearly, there would have been a cost associated with outright cancellation, which would have been different from cancellation and a different contract. We've heard expert testimony here that the commitments to outright cancel the plants and not relocate them would have been more costly. Could you speak to that?

Mr. John Brodhead: I think it's tough to say. The advice we received is that that route would have ended in litigation, so it's tough to say what the exact costs would be. I think our view at the time was that it was going to be a significant amount of money and no power on the end of it. That was why—

Mr. Bob Delaney: So in addition to no power, there would have been the sunk costs, the value of the contracts, legal costs, and possibly damages. Correct?

Mr. John Brodhead: It's tough for me to speculate, not as a legal expert.

Mr. Bob Delaney: I understand.

Mr. John Brodhead: You've had people more expert than I.

Mr. Bob Delaney: I want to talk a little bit about the motion that was made in the estimates committee. To be clear, you were in the Premier's office at that time, right?

Mr. John Brodhead: Yes.

Mr. Bob Delaney: May 2012.

Mr. John Brodhead: Of 2012, yes.

Mr. Bob Delaney: All right. And at that time, the motion from the estimates committee was not directed at anyone or any information in the Premier's office, correct?

Mr. John Brodhead: Correct.

Mr. Bob Delaney: All right. And at that time, the estimates committee very specifically asked for documents from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority, between a range of dates, pertaining to these two issues. Correct?

Mr. John Brodhead: That was my understanding, yes.

Mr. Bob Delaney: Okay. At the time of that motion, in May 2012, complex and sensitive negotiations were ongoing with both proponents. Right?

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Mr. John Brodhead: Yes.

Mr. Bob Delaney: So what would it have meant if the OPA and the province's negotiating position was "dis-closed," "prejudiced," "compromised"—whatever word

you feel applies—if the companies negotiating with the OPA had had access to confidential and privileged information?

Mr. John Brodhead: I think the minister's concern, which I shared, and the advice we were getting from others, was that it would compromise our ability to get the best possible deal. We were worried and the minister was worried that this would have a direct influence on the price that we were able to get.

Mr. Bob Delaney: Minister Bentley, in fact, told us, "Producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario. Having said that, I always intended to produce the documents. It was a question of when, not if."

Does that—

Mr. John Brodhead: That's consistent with the discussions I had.

Mr. Bob Delaney: Okay. I've heard some of the proponents from the alternate universes say that they wanted to make public this information that might have hurt the negotiations and thus damage the taxpayers.

Mr. John Yakabuski: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, on a point of order.

Mr. John Yakabuski: On a point of order: I don't think it's fair to refer to people from—

Mr. Gilles Bisson: No, he's talking about his friends.

Mr. John Yakabuski: Well, I don't know who he's referring to. But to refer to people being from an alternate universe is demeaning to this committee and the work that we're trying to accomplish, and I think he should withdraw that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

Mr. Delaney, please proceed.

Mr. Bob Delaney: Thank you, Chair. I might mention that no mention was made of any party in that.

In some of the work that you were doing, did it seem as if, as Don Guy said earlier, you were dealing with a mindset that was more interested in scoring political points than, in this case, saving the taxpayer some money and doing some public good?

Mr. John Brodhead: I'll leave the editorializing to you. I don't want to say we're in a bubble, but the policy, the works—it didn't have as much of an impact in my world. You know what's out there; you hear the conversations. But in my view, there was a complex negotiation ongoing with a commercial party, and making sure we got the best deal possible was the priority.

Mr. Bob Delaney: You talked earlier about record-keeping. Former Premier McGuinty was here to testify, and he spoke to there having been a lack of adequate training for staff in document retention.

I'm going to go back to where we started, which was, at the outset of this, in the estimates committee. Information wasn't expected of the Office of the Premier. In the

June 7 response to the Information and Privacy Commissioner's report, the former Premier stated, "I agree with the commissioner that despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier's office were fully informed of their responsibilities. This inadequate training made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated."

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Bob Delaney: In the last minute, could you comment on whether there was a lack of formal training and what, in retrospect, might have been done to properly manage records?

Mr. John Brodhead: There was definitely an absence of training in what documents were supposed to be kept and how they were supposed to be archived. As this committee knows, I sent a note to the committee on June 27 laying out that, because of the committee's deliberations and the report of the Information and Privacy Commissioner, I realized that I had not properly archived briefing notes that I kept and that I had turned them back over to government for proper archiving. I sent that note to the committee. Two of those briefing notes mentioned this—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

The floor is to the PC side momentarily, post-hydrating. Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. I have documents to be distributed.

The Chair (Mr. Shafiq Qaadri): Yes, please have those distributed. The floor is yours.

Mr. Victor Fedeli: Thank you very much.

Welcome, Mr. Brodhead. I appreciate the time you're taking to be here today. You're going to get quite a large stack of documents from the Clerk. I'd like you to go, when you get them—about a dozen pages in, you'll see document 3. We'll get back to document 1 and document 2—there's about a dozen there—but we'll go right to doc 3, about a dozen pages in. I'll give you a moment. Doc 2 ends with page 3 of 3, I think.

Mr. John Brodhead: Is this the one that has page 2 on the bottom and starts with, "If they haven't got their letter"?

Mr. Victor Fedeli: Yes, you're on the right one. Thank you very much.

In these documents, we've got quite a handful of pages to go through; document 3 alone has 31 pages. Up at the top, just under the sentence that you spoke of, you'll note this is an email from you. It says, "Brodhead, John (OPO)."

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: What is OPO?

Mr. John Brodhead: OPO is the Office of the Premier of Ontario.

Mr. Victor Fedeli: Okay, and this is to David Livingston at OPO.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: The date is Wednesday, July 11—although the year isn't there, it's 2012—and the subject: Vapour.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: About halfway down, or actually down at the bottom, you and David Livingston are having a discussion about Project Vapour. Actually, if you look at another page in, you're really getting into the fact that Vapour-lock is done now, and now you're getting on to talking about Project Vapour. You're asked by Livingston, "What do you think—is Jonathan up to it?" Who is Jonathan?

Mr. John Brodhead: I want to make sure—okay, on the next page, it refers to—I believe they're referring to Jonathan Weisstub, who is vice-president, Infrastructure Ontario, at the time.

Mr. Victor Fedeli: Okay, so he works for Infrastructure Ontario.

Mr. John Brodhead: Infrastructure Ontario, yes.

Mr. Victor Fedeli: Okay. So he's asking you if Jonathan is up to it. Up to what?

Mr. John Brodhead: I think at this point the negotiations were—I don't want to say they were stalled, but they were not moving as quickly. I think they were struggling to move forward on the negotiation.

Mr. Victor Fedeli: So you're involved in making the decision here. You're asked your opinion: Who should be negotiating for Project Vapour?

Mr. John Brodhead: I think I was being asked—on Vapour-lock, when a similar thing happened, we decided as a collective, including the minister's office, the ministry, that it would be helpful to bring in a new person, and that was Rob—

Mr. Victor Fedeli: So you're being consulted on this.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: And you answer, "I don't think he has the stature that you or Rob did...." Who's Rob?

Mr. John Brodhead: Sorry, stature?

Mr. Victor Fedeli: Yes.

Mr. John Brodhead: Okay. Rob Prichard, who did the Vapour.

Mr. Victor Fedeli: Oh, okay. Rob Prichard did the Vapour-lock.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: And you don't think Jonathan Weisstub has the stature to do Vapour.

Mr. John Brodhead: Just to be clear, because Jonathan is a very dedicated civil servant. He is a terrific guy.

Mr. Victor Fedeli: I was just reading your words.

Mr. John Brodhead: No, no, no. But I do like to say that, in this case, what I was referring to is because it was at such a senior level, we wanted someone of that—

Mr. Victor Fedeli: It's okay. I was just reading your words.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: So, they call it "V." When they refer to "V," is that also Project Vapour? Just here and there, throughout this document and others, you're going to see, "I'm not in a hurry on V"; "Nice work on VL." Does "VL" refer to Project Vapour-lock and "V" is Vapour?

Mr. John Brodhead: In the ones that I'm looking at here, yes.

Mr. Victor Fedeli: Okay. Go down, not page 3, but let's go to page 4. We're into Vapour again, and this one is another discussion that you're involved with. This is August of 2012, a chit-chat about Vapour. Would you agree?

Mr. John Brodhead: Sorry, is this document 4 or page 4 of document 3?

Mr. Victor Fedeli: Page 4 of 31. We're still on document 3; we're going to be on document 3 for quite a while. Just two pages after—

Mr. John Brodhead: So the one with Jim Hinds: "Okay, one down, one to go"?

Mr. Victor Fedeli: One past that; another page past that. In the middle, you'll see, "Urgent—Call re Vapour." So you're involved in a call from the energy department on Vapour.

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Mr. John Brodhead: Yes.

Mr. Victor Fedeli: Okay. You're in these discussions, or this urgent call. The next page is quite a lengthy series. It's "Energy minister isn't saying who made the decision to cancel gas plant." This is the one where everybody's trying to fix where Minister Bentley says—it says here where Minister Bentley says that the re-election campaign rather than government made the decision. You're asking, "Are we going to correct this?" Somebody says, I'm "on my way to see" the minister. His response is "duly noted."

You're involved in these discussions about the gas plant—

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: —the spinning, the comms, if you will, the communications of the gas plant. You're involved.

This is a document from July 2012. The next page, page 9 of 31—it's to John Brodhead, to you. It's a back-grounder on gas plant relocation costs. This is a very detailed document. The second page: Can you tell us briefly about it, page 10 of 31? It's pretty detailed here. Give us the 30-second version of what this is all about. Again, this is a July 9, 2012, document on the gas plant.

Mr. John Brodhead: My understanding is, this is one of the OPA's earlier versions of the back-grounder that was going to be released, along with the news release.

Mr. Victor Fedeli: Do you understand all the numbers there, the \$75 million; the \$10 million; the total is \$170 million—those kinds of things? You were sort of spouting some of those numbers earlier in discussions. You understand these numbers.

Mr. John Brodhead: I would say I understand them at this level. If you ask me why certain things are in

certain buckets as opposed to others, and what is a steam condenser and the level down, I wouldn't have that level of detail.

Mr. Victor Fedeli: But you understand the buckets.

Mr. John Brodhead: I understand the \$170 million here and generally what went into it.

Mr. Victor Fedeli: This gas plant relocation file from July 2012. A couple more pages down, 12 of 31, Laura Miller on July 31, 2012: subject, Vapour. The file is called Vapour. She's asking, "Do you have a sense of damages? Looking for ballpark," and you're saying to her that you "have more info on this," and I "can fill you in...." What kind of damages was she talking about here, and what would you have known about damages?

Mr. John Brodhead: I think she was probably—and my recollection of my conversation was, this was basically a status on where the negotiations were, how they were going.

Mr. Victor Fedeli: And you would have had—you're answering her, "Have more info ... Can fill you in...." This is the August 7, 2012, file with the subject, Vapour.

Mr. John Brodhead: Sorry, the question is, did I—

Mr. Victor Fedeli: You would have known—when she asked you a question, "Do we have a sense of damages?" your answer was, "Have more info on this. Can fill you in...."

Mr. John Brodhead: I'm not sure if I had detailed information on damages at that time. What I was going to provide her with was an update kind of generally on where negotiations were going, what we thought our timeline would be.

Mr. Victor Fedeli: Okay. That's fair.

Flip over 13; there's nothing there. Page 14 of 31: "Oakville note for the P." I presume "P" is Premier?

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: "I need some points"—this is from Emily Jephcott—"on the gas plant cancellation in Oakville." This is February 2012, so you were a go-to guy. They would be asking you, "Do you have anything? I need some notes."

Mr. John Brodhead: Right.

Mr. Victor Fedeli: That's what this would be about? You're the guy she would go to?

Mr. John Brodhead: This would have been, I assume—Emily would have been doing an event note for him, so he would have been going to Oakville and looking for—

Mr. Victor Fedeli: And they'd be coming to you for that.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: The next page, 15: This is to John Brodhead. Again, it's April 2012. "Premier" is the subject. "Wants to talk Mississauga gas plant with you.... Possible?" So you're going to talk to the Premier about the Mississauga gas plant.

Mr. John Brodhead: That would have been him going to an event and me saying—

Mr. Victor Fedeli: Yes. He's "off to Mississauga," it says.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: So you'd give him the briefing.

Mr. John Brodhead: Just from verbal.

Mr. Victor Fedeli: Your notes are from your head.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: Yes. But this was a Mississauga gas plant email here from 2012.

The next page, 16 of 31: "What did you and Jonathan decide about Vapour?" Again this is a file on Vapour, July 12. I don't know that we need to know what you decided; I'm just acknowledging that there's an email here about Vapour on the 12th of July. Is that correct?

Mr. John Brodhead: It appears to be, yes.

Mr. Victor Fedeli: Okay. Page 17: Now we're getting a little more detailed. You're being asked—somebody's pulling the Vapour-lock TB c-fund submission. What is that? What is a TB c-fund?

Mr. John Brodhead: A Treasury Board contingency fund submission.

Mr. Victor Fedeli: Contingency fund. Thank you. I had no idea what that one was. So they're pulling that. They're going to you on this. This is to you. They're into talking about the \$190 million from the tax base. You're the guy that they're going to on this. Up at the top, we're copying so-and-so and so-and-so, as "we may have an idea to justify \$190 million." This is the first time they talk about the \$190 million coming from the tax base. You understood that as well, I presume.

Mr. John Brodhead: Sorry. I understood the \$190 million—

Mr. Victor Fedeli: Comes from the tax base.

Mr. John Brodhead: I understand it. I'm not sure at this point whether I understood it, but I understand.

Mr. Victor Fedeli: Okay. Next page, 18 of 31, you're being asked a question by Serge Imbrogno: "How are you being looped in on Vapour?" So he's asking you about Vapour in September 2012, and you say it's "JDL via Bert." Who's JDL?

Mr. John Brodhead: That's David Livingston.

Mr. Victor Fedeli: Okay, thank you.

Another page, 19 of 31: Now we're getting a little deeper into the question I asked a couple of minutes ago, the understanding that energy was funded with money from the tax base. I guess it all started—this is a note from you. You're writing to Rob Dowler at cabinet.

Mr. John Brodhead: Cabinet Office, yes.

Mr. Victor Fedeli: "Rob—cabinet note from TB ... says Vapour-lock funded via OPA. It was tax base...." So you do know.

Mr. John Brodhead: Yes, so at this point I was saying, no, it's not from the right base. It's from the tax base.

Mr. Victor Fedeli: It's from the tax base. So you do know that the \$190 million, then, is from the taxpayer.

I can go on and on and on. I guess, instead of continuing through the rest of these 31 pages and/or document 4, which would be your Outlook calendar on Vapour, Vapour-lock, meetings, that type of thing, why don't we just jump right back to the beginning of this file on

document number 1? Do you have that one there? Right back at the beginning.

So you're asked by freedom of information to turn over emails, memoranda, Outlook calendar invitations making reference to Project Vapour—and it spells it a couple of different ways—in the years 2010, 2011 and 2012. Now, I've just turned over—there's 31 pages there. We've got so many documents, yet your response to freedom of information, when they ask you to turn over the Project Vapour: "I have no records." Can you tell me what you mean by you have no records when we are here with, to start, 31 records?

Mr. John Brodhead: When I say I have no records, it would have meant I had no records in my inbox. What I think you have here are the ones that MGS was able to get off the—I've heard you've had many discussions on what this thing is—backup file of some sort, which I deleted because of my view that they were transitory or duplicative in nature, and not having been trained otherwise.

Mr. Victor Fedeli: Do you believe, then, that the very detailed pages which get into the breakdown, like page 9 of 31, repurposed costs, \$75.5 million; engineering, \$10 million; \$170 million as the total net relocation cost; other provisions that are made; the plant description of 300 megawatts, that it's a gas combined-cycle facility with a net revenue requirement of \$12,400 a month—that's transitory? This is a transitory document that's, "Oh, hi, Sue. I'll meet you for coffee"?

Mr. John Brodhead: Not having been trained on the definition of "transitory" and what that actually means, my intuition—

Mr. Victor Fedeli: I'm not buying that. I'm sorry; I'm not going to buy that. Let's talk about this. You know the difference between right and wrong: a transitory email, by the very nature of it. You know, when you're into details here about a treasury fund submission, \$190 million coming from the tax base, not the rate base—

Mr. John Brodhead: These were all—

Mr. Victor Fedeli: Please, don't go down that path. Let's just talk man to man here for a second.

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Mr. John Brodhead: So these were—as you look at them, the good example is the backgrounder used. That was in the process of developing an actual backgrounder that would be released, so it was in the process of getting to a final public document. Not having been trained in the details, my intuition was, well, that's going to be a document that's going to be released to the public and this is where it is and there are duplicates and other people here—so, in my mind, at the time, not having been trained, that was my intuition.

Mr. Victor Fedeli: So it's all about the lack of training is why you said—even though your name appears 1,500 times through the emails that we just got from MGS, you claim you have no responsive records. Your words are, "I have no records"—nothing.

Mr. John Brodhead: Not at that time.

Mr. Victor Fedeli: Not one record.

Mr. John Brodhead: Not at that particular time.

Mr. Victor Fedeli: What does that mean, "not at that particular time"?

Mr. John Brodhead: When I was asked whether I had records, to respond to that, I had no records at the time. I deleted some—

Mr. Victor Fedeli: So doc 4, your Outlook—you cleaned out your Outlook schedule as well; you don't have any of these? Because this very specifically says Outlook calendar invitations; doc 4, page 2 of 9. These are invitations for you to talk about gas plants here. These are meetings with Russ Girling and Alex Pourbaix from TransCanada Pipelines. This is pretty serious stuff here, Mr. Brodhead. You're another one of these central figures. You can't tell us that you were just, to use your words, wagon master and things. The Premier goes to you for answers. You're the go-to guy in a lot of these emails, 1,500 times. Please try to square that circle for me. I don't get this. I don't get what's going on here today.

Mr. John Brodhead: As I said, not having been properly trained, I did know that there were certain documents intuitively that I needed to keep—the briefing notes to the Premier—and I returned those to be properly archived. I have lots of emails, I get a lot of emails; my name is in a lot of emails. But I do delete them at the time for what I thought was—

Mr. Victor Fedeli: When did you delete these 1,500 emails that have you and the gas plants inextricably linked?

Mr. John Brodhead: I have no idea when I would have deleted them.

Mr. Victor Fedeli: Do you delete them every day? Did you delete them when you got this request?

Mr. John Brodhead: Definitely not.

Mr. Victor Fedeli: When did you delete them?

Mr. John Brodhead: I usually delete it on an ongoing basis to keep my inbox manageable. To be honest, it—

Mr. Victor Fedeli: So your answer was, "I have no records." It wasn't, "Oops. Look, guys, let me fess up. I deleted all my emails." That wasn't that. It was, "I have no records." You're not involved in the gas plant scandal. "I have no records": That's what you answered.

Mr. John Brodhead: I said I had no records on me at the time.

Mr. Victor Fedeli: No, you said, "I have no records."

Mr. John Brodhead: Right, and they were asking about whether I had any from the time they were asking from, and I responded that I had no records at the time.

Mr. Victor Fedeli: Well, you didn't say, "I have no records at the time." You said, "I have no records." There are 1,500 mentions of you. You're 1,500 times here. That's a lot more than a lot of people. I took considerable time here to go through these emails. These aren't transitory. These are very detailed emails. You're involved in deciding who gets to do the consultation: Is it Jonathan or not? "Well, I don't think he's up—he hasn't got the stature," you said. Someone wants to know about the

\$190 million, and you're the guy they went to to ask. And you said, "Hang on a second. No, no, no"—you knew that the \$190 million was tax-based, not rate-based. That also implies you know there are two, and we're going to get to that in the next 10 minutes.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: Please, you've got a minute here. Come clean here to this committee. Come clean and tell us. Please come clean.

Mr. John Brodhead: I mean, the truth is that we were not properly trained, and I viewed these documents, and I went through the 465 pages just as thoroughly as you did and, in my understanding at the time, based on the knowledge I had of the definitions of "transitory" and "duplicative" and "in process"—

Mr. Victor Fedeli: So you had files, but you said you didn't because you think they're transitory?

Mr. John Brodhead: No, they were not in at the time, so I—

Mr. Victor Fedeli: And you cleaned out your Outlook as well. You went back and deleted your—now, that's not easy to do.

Mr. John Brodhead: I don't recall doing that, no.

Mr. Victor Fedeli: So if you didn't do that, why didn't you turn over the Outlook documents? It asked you very specifically: emails, memoranda, Outlook.

Mr. John Brodhead: I'm not sure.

Mr. Victor Fedeli: You're just not sure.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. To the NDP side, Mr. Tabuns.

Mr. Victor Fedeli: I'm pretty sure.

Mr. Peter Tabuns: Mr. Brodhead, when you left the Premier's office, did you continue to have contact with senior Liberal staffers and members in regard to the cancelled gas plants?

Mr. John Brodhead: No.

Mr. Peter Tabuns: You went on to work at Metrolinx—

Mr. John Brodhead: Metrolinx was in 2010. I went to work there for a year, from January 1, 2010, to February 2011.

Mr. Peter Tabuns: Did you have any exchange of emails around gas plants in that period?

Mr. John Brodhead: No.

Mr. Peter Tabuns: In your time in the Office of the Premier, did you use PINs and BlackBerry messaging to communicate on anything to do with Vapour or Vapour-lock?

Mr. John Brodhead: Not that I recall.

Mr. Peter Tabuns: So no one ever communicated to you using those methods?

Mr. John Brodhead: Not that I'm aware of, no.

Mr. Peter Tabuns: On anything?

Mr. John Brodhead: On anything? There were conversations on that mode from time to time, but not that I recall on this issue.

Mr. Peter Tabuns: And not on Vapour or Vapour-lock.

There were quite a few emails through the summer of 2012. Your office was looking for clarity on the true costs of the gas plant cancellation. When did you realize the \$190-million figure wasn't accurate?

Mr. John Brodhead: I think the Auditor General's report—when he said that that was the items that in our backgrounder, and we had been advised were repurposeable, he included as non-repurposeable. That, for me, was the first time that number grew.

Mr. Peter Tabuns: It's interesting, because I know Mr. Bentley used that number about repurposeable—whether they were repurposeable or not. Your government paid the money and didn't get reimbursed. You were out of pocket. The people of Ontario were out of pocket. Did you not realize that you had paid and weren't getting reimbursed?

Mr. John Brodhead: Sorry. I'm not clear on the question. Are you asking whether I knew there were repurposeable costs, or non-repurposeable—

Mr. Peter Tabuns: That the money you paid for equipment that could be moved from one place to another was money that the people of Ontario spent and weren't going to get reimbursed for. It was an expense.

Mr. John Brodhead: What I knew was that the non-recoverable costs were \$190 million, and that there were others that we included in the backgrounder that we felt were repurposeable, that then the Auditor General opined and said they should have been in the non-recoverable bucket.

Mr. Peter Tabuns: So you didn't realize that the \$190 million was not complete until the Auditor General came forward with his numbers?

Mr. John Brodhead: I'm not sure what you mean by "complete."

Mr. Peter Tabuns: Well, there were costs beyond the \$190 million that the people of Ontario had to absorb because of this decision. There were the costs of extra electricity because of line losses. There was real estate that was involved. There were a variety of expenses that took us far beyond \$180 million. You didn't realize any of that until the Auditor General came forward?

Mr. John Brodhead: What I knew at the time was that the non-recoverable costs were \$190 million. When the Auditor General came forward and added the pieces we thought were reusable into the non-recoverable bucket, that was when I realized that the non-recoverable number was more than \$190 million.

Mr. Peter Tabuns: So you had no intuition about this, or no knowledge of this, until the Auditor General's report came down?

Mr. John Brodhead: The advice we were given was that the \$190 million was the non-recoverable cost.

Mr. Peter Tabuns: Did Premier McGuinty have any sense that there was a cost beyond the \$190 million?

Mr. John Brodhead: I never had that conversation with him. What we talked about was the non-recoverable \$190 million.

Mr. Peter Tabuns: I have to tell you, even just as someone reading the newspaper, I knew that figure was

not complete or accurate. Bruce Sharp, who testified early on here, noted a number of other costs that would be attached to it. I find it very difficult to believe—and I've had a chance to go through a fair number of emails now; you guys follow media awfully closely, and you critique it very closely—that you wouldn't notice that it was being pointed out that this figure was incomplete and inadequate.

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Mr. John Brodhead: I turn back to the email I got from the chair of the OPA, which says that \$180 million was the number we stood behind for energy and for Greenfield South—

Mr. Peter Tabuns: —what was paid out, but that wasn't the full cost of the decision.

Mr. John Brodhead: But the non-recoverable cost is what we were focused on, in terms of minimizing those.

Mr. Peter Tabuns: I'm going to turn it over to Mr. Bisson, but I'm still surprised by your answer.

Mr. Gilles Bisson: Well, I've just got to follow up on that before I go to the next one: You're the government. You had all of the apparatus to tell you what the numbers were. You had the OPA, the Ministry of Energy and everybody else that works for the government and broader public to tell you what the numbers were. Why did it take the auditor to clarify that it cost more than \$190 million when you had all the numbers?

Mr. John Brodhead: So the advice we were given from the OPA and from the Ministry of Energy was that it was \$190 million, and then the other costs were recoverable costs—

Mr. Gilles Bisson: Listen, the auditor had access to the same information you had, and he came up to a number greater than \$190 million, so was it a case that you were purposely trying to keep the numbers down for the public?

Mr. John Brodhead: Absolutely not. That was the number we received, and you'll have to discuss that with the—

Mr. Gilles Bisson: Would you say it's fair that the public might perceive it that way? The auditor has the same numbers as the government of Ontario. He comes out and says it's more than \$190 million. You guys, for the entire time before the auditor gave his report, said it was \$180 million, then it was \$190 million—you tried to lowball the numbers. So, isn't it the case that you were actually trying to lowball the numbers?

Mr. John Brodhead: I don't believe so. I believe that when the OPA and the Ministry of Energy gave us the \$190 million, they were, in good faith, giving us what they thought was the number.

Mr. Gilles Bisson: It sounds to me like you're lowballing.

Let me get to the next question. Did you keep a day-book through your time in the Premier's office—you know, notes of what happened every day and all that kind of stuff?

Mr. John Brodhead: I wouldn't say every day, but I had notebooks, yes.

Mr. Gilles Bisson: But you had a notebook. Is that notebook still around?

Mr. John Brodhead: Yes.

Mr. Gilles Bisson: And that is archived, so that's something that we're able to get?

Mr. John Brodhead: Yes.

Mr. Gilles Bisson: Okay. Do you know if other people in the Premier's office kept the same habit of keeping notebooks?

Mr. John Brodhead: It varied by personality.

Mr. Gilles Bisson: You worked with Chris Morley. Did he keep a notebook?

Mr. John Brodhead: I don't recall.

Mr. Gilles Bisson: Interesting.

There's an interesting email here that came out on September 5, 2012, from Tim Shortill to you, and it says, "Just remember, Brodhead and Shortill don't get fired." What is he referring to?

Mr. John Brodhead: Sorry, what document are you referring to?

Mr. Gilles Bisson: There's an email. I'll just give it to you. What is Mr. Shortill referring to when he talks about how you and he are not to be fired? Was there something going on here?

Mr. John Brodhead: No, I believe this was during the confusion around the \$10 million on NUG. I believe he was making a joke about him not getting fired as a result of us not getting the number right on the first try.

Mr. Gilles Bisson: Well, somebody should have been fired, because that cost people a whole bunch more money.

Peter, have you got something?

Mr. Peter Tabuns: No.

Mr. Gilles Bisson: How much time do we have left?

The Chair (Mr. Shafiq Qaadri): Two minutes.

Mr. Gilles Bisson: Well, I want to get back to the keeping of records, because it was my experience when I worked with Mr. Morley that Mr. Morley kept copious notes. At every meeting I ever attended with him, he had notes. I know he came before this committee, and he testified that, in fact, he kept notes on the teachers' bargaining and others. Clearly he, having that practice, must have kept that practice on when he was working in the Premier's office. Are you sure you never saw him take notes?

Mr. John Brodhead: I wouldn't say I never saw him take notes. I just don't recall if he had a notebook that he used often.

Mr. Gilles Bisson: But he was known to take notes in the due course of things during a day in the Premier's office.

Mr. John Brodhead: I can't speak to that.

Mr. Gilles Bisson: Well, did you ever see him with a notepad?

Mr. John Brodhead: I've seen him with a pen and taking notes, yes.

Mr. Gilles Bisson: Okay. That's what I was asking.

Just back to the numbers: It seems to me that you guys were fixated on the cost. There was a traffic of emails—

as you said, the air traffic controller that you were. There was all kinds of congestion in regard to the traffic of emails dealing with the question of cost. Is it fair to say that, in fact, you guys were so concerned with cost, your sole concern was trying to lowball the number, and not give the public or the Legislature the actual number?

Mr. John Brodhead: No, I don't believe that's the case at all. I do feel that the numbers we received from the OPA and the Ministry of Energy were good-faith attempts to get the costing—

Mr. Gilles Bisson: So why did the auditor get it right and you guys got it wrong when you both had the same information?

Mr. John Brodhead: You'll have to ask the people who gave us the numbers.

Mr. Gilles Bisson: Well, I'm asking you, because you had the same information as the auditor. I would argue that you probably had more information. Why is it that the auditor came up with one number and you guys were purporting a different number that was lowballed?

Le Président (M. Shafiq Qaadri): Merci, monsieur Bisson. Votre temps est expiré. Monsieur Delaney.

Interjection.

Mr. Gilles Bisson: You can do that on Mr. Delaney's time.

Mr. Bob Delaney: Okay, thank you very much, Chair. Chair, I've asked the Clerk to provide me the exact motion that requested some of the documents that Mr. Fedeli was quoting from when he was asking Mr. Brodhead to clarify his remark, "I have no records."

Now, in looking at the documents provided to the committee by Mr. Fedeli, there is a document to you on Wednesday, October 10, from John O'Leary, and it says, "I require your assistance to fulfill a freedom-of-information request."

"The request is..." and the search terms are "Project Vapour" and "Project Vapor."

I've been looking at some of the documents that Mr. Fedeli made mention to, and those search terms don't come up on it. When you did the search—

Mr. Victor Fedeli: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, point of order.

Mr. Victor Fedeli: Thank you, Chair. A point of order: There are actually two different freedom-of-information requests that Mr. Brodhead responded to.

The Chair (Mr. Shafiq Qaadri): Clarifications of issues are not points of order. You're welcome to bring that up—

Mr. Victor Fedeli: Completely, but, Chair, he's making a point that what we're looking for is Project Vapour. The second one says "Mississauga and Oakville gas plants." There are two—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Delaney, continue.

Mr. Bob Delaney: The point that I'm making and that I'd like to explore with Mr. Brodhead is that Mr. Fedeli was asking you about documents produced pursuant to a very comprehensive document request with many search terms, and asking why you didn't find all of those search terms, even though the search terms you were asked to find were "Project Vapour" or "Project Vapor," and both of them are in quotation marks. When you did your search, is it reasonable to assume that you would not find documents that didn't include those two search terms?

Mr. John Brodhead: I'm not sure why, but I'm guessing that's why. I don't know why they wouldn't have come up. Some of these items that you refer to actually don't have anything to do with Vapour or Vapour-lock. Some of these Outlook calendars—Russ Girling and Alex Pourbaix: That was a general meet-and-greet. We did not talk about—I don't recall talking about Vapour in that discussion. But I don't know why the other ones weren't caught in the search, the Outlook calendar ones.

Mr. Bob Delaney: Well, isn't it true, then, when you are asked to do work pursuant to search terms, that you must search on those search terms but only those search terms, and the documents that you have to provide must respond to the request made but only to the request made?

Is it not also true that at the time you did that document search, there was no way you could have anticipated the much more comprehensive motion asked for much later than when you did the original search?

Mr. John Brodhead: I would have searched the items that were sent to me by Mr. O'Leary, so I'm not sure why they didn't show up in my—

Mr. Bob Delaney: Okay, I think we've made the point. So it's apparent, then, that staff were not required to keep every single record. The Archives and Record-keeping Act explains that transitory records are not required to be kept. In looking at the material provided by Mr. Fedeli, I have to say that a lot of this stuff looks very transitory to me.

The Common Records Series, in fact, defines these records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

Would that description have covered many of the emails and calendar entries you just described, a few minutes ago, having deleted?

Mr. John Brodhead: Not being trained on the specifics, and knowing that it requires judgment, that judgment is a key portion, I do believe that the documents are transitory, duplicative or in the process of getting towards the final document.

Mr. Bob Delaney: Okay. We asked Secretary Wallace about his personal experience with transitory records. What he told us was, and again, I'll use his words, "from the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of

my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant.”

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Do Secretary Wallace's comments about transitory records make sense to you?

Mr. John Brodhead: It does make sense. We were working on intuition of what the specific obligations were at the time, not having been properly trained in that. I think what's important is that I did decide to keep the documents that I felt were unique to me, that nobody else would have, and those were briefing notes that I wrote to the Premier. Even though not knowing the proper process for archiving those and finding out from this committee and the Information and Privacy Commissioner what the proper process was and returning the documents to the government, I did have intuition that those were documents that were unique to me, that no one else would have, and that would be important if the new government had a question on a certain issue or if I needed to refresh my memory on something. Now, knowing, I'm glad that I've been able to get them properly archived.

Mr. Bob Delaney: In other words, despite the allegations made against you, in good faith and with due diligence you actually did keep the truly relevant records pertaining to that file during the time that you were in the Premier's office.

Mr. John Brodhead: What I believed to be the proper way of keeping—document retention at the time.

Mr. Bob Delaney: That's fine. That's all I wanted to know.

I just want to ask you—I want to wrap up with some of our experience dating back from when the government was first elected 10 years ago. As we all know, at that time Ontario inherited an energy crisis from the former government. In fact, this week marks the 10th anniversary of the blackout. But since then, we now have a clean, modern, reliable electricity generation and transmission system. That's part of the story that seems to have been missing in this entire discussion. It is important, then, that we keep the committee's work in context.

We should also mention that there are 17 gas plants built and in service in willing host communities and supplying power to families and businesses across Ontario.

From your experience, what are the major differences in Ontario's energy system from 2003 to today?

Mr. John Brodhead: I think, of the 465 pages of emails that you received—and this is the work in me. I do think the most interesting one is the deck that was presented by the Ministry of Energy—I think it was towards the back of that package—about the priorities in the energy system that we were working on at the time. These included a clean energy economic development strategy, the next phase of the feed-in tariff program, smart grid work. There was a lot of interesting work going on to revitalize the energy system, and I only got into the fun world of energy policy in 2012, but I was

impressed by the amount of upgrades to the system that we'd made and some of the new avenues we had pursued in terms of green energy.

Mr. Bob Delaney: Okay, thank you. While you were answering the question, the Clerk very kindly brought in a motion to the standing committee dated June 25. You were asked, and you responded, “I have no records,” when the request was “Project Vapour” and “Project Vapor” from your emails, memoranda, Outlook calendar and whatnot during the calendar years 2010, 2011 and 2012. Now, the documents that Mr. Fedeli gave you were produced by a motion from him that read as follows: “I move that the Standing Committee on Justice Policy request from the Premier's office all documents and electronic correspondence stored on the G drive related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received by the following individuals”—Dalton McGuinty, Chris Bentley, Brad Duguid, Kathleen Wynne, Chris Morley, etc., etc.—and that “the search terms include any and all proxy names including but not limited to the following: Project Vapour, Project Vapor, Vapour, Vapor, Project Vapour-lock, Project Vapor-Lock, Vapour-lock, Vapor-lock”—spelled both ways—“TransCanada, TCE, Greenfield, Greenfield South, Project Fruit Salad, Project Banana, Project Apple, Oakville gas plant, Mississauga gas plant, EIG,” and that the documents and correspondence be provided by such and such a date in such and such a format.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Bob Delaney: So in essence, you were being asked questions based on a motion to produce documents that was in fact far broader than the FOI request that you originally made. Isn't that correct?

Mr. John Brodhead: That sounds right.

Mr. Bob Delaney: Thank you very much, Chair. I'm done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

To the PC side, Mr. Fedeli.

Mr. Victor Fedeli: Well, the one document I never bothered to spend my first 20 minutes but I will spend the next time on will actually resolve this issue that's somehow spinning around in Mr. Delaney's head. I'll ask you to look at doc 2. This is the second freedom-of-information request, a little broader. I'm going to read it out loud:

“A new request has been received from an individual for access to all records sent or received in the period January 1, 2012, through October 2012,”—the 31 emails meet this criteria—“by the Premier, the Premier's office, consultants to the Premier's office, or advisers to the Premier's office”—that's you; I presume that's you. It's within those dates, and it's got your name on it, so we've got two out of three so far—“relating to the construction, contracting, relocation, or any other arrangements associated with the gas-fired power plants once contracted for development in Oakville by the firm TransCanada Energy or related entities and also Mississauga by the firm Eastern Power or related entities.”

This is a request that you told freedom of information, "I have no records."

Despite what Mr. Delaney tried to paint here, that we spelled "vapour" differently or whatever, that was only one. He's correct; it was a very tightly worded one. But the second one, Mr. Brodhead, you would admit, is all-encompassing. This is all-encompassing, and that, as well as the email that I brought earlier, pertains to the 31.

Before you answer, what Mr. Delaney was talking about is the very activity the privacy commissioner said breached the privacy laws.

So why don't we talk about this doc 2 where you told the freedom of information that you do not have any records? Now we're getting into some serious discussion here, Mr. Brodhead.

Mr. John Brodhead: Sorry, I don't see a doc 2 where there's a response from me here.

Mr. Victor Fedeli: So did you respond that you have documents, Mr. Brodhead?

Mr. John Brodhead: I don't know. Is the other one the same version? Is the other one where I said "no response" responding to this? I don't—

Mr. Victor Fedeli: The letter that we have from the Cabinet Office says, "Five of those staff (including David Livingston) confirmed in writing that no records resulted from their search." Are you one of those five?

Mr. John Brodhead: I don't know. I'm sorry; I can't answer. I can try and find out.

Mr. Victor Fedeli: That's okay. We'll find out.

Regardless, you have two requests now, one tight that we have many, many documents, "vapour" spelled V-A-P-O-U-R, within the time frame with your name. You don't have anything? No apology, no nothing?

Mr. John Brodhead: No, I'm not sure why the Outlook ones weren't there. I think the emails, in my opinion of what I knew to be my responsibilities and obligations at the time, were transitory, duplicative or—

Mr. Victor Fedeli: Did you make your best efforts?

Mr. John Brodhead: Yes, I believe I did.

Mr. Victor Fedeli: Did you look in your deleted file?

Mr. John Brodhead: I believe I did. I believe I followed the process that I always followed on this.

Mr. Victor Fedeli: You regularly deleted your email?

Mr. John Brodhead: It was kind of semi-regular. I don't know what—

Mr. Victor Fedeli: Was that standard operating procedure in the Premier's office, to delete email of an important ongoing issue?

Mr. John Brodhead: There was no training, no particular policy, so I'm not aware of what others did. I kept the documents that I knew were unique to me that would be valuable—

Mr. Victor Fedeli: So you don't have any documents, but I have 1,500—

Mr. John Brodhead: I have 1,500 here, too.

Mr. Victor Fedeli: It's very, very interesting how I ended up with 1,500, and you have zero documents.

Mr. John Brodhead: Those were from the backup files. If the search request had been the backup files—

Mr. Victor Fedeli: Let's be careful now. Some of these are from the Ministry of Energy from some time ago, so let's just be careful about that.

Mr. John Brodhead: Sorry; they're from other sources; they weren't in my inbox at the time.

Mr. Victor Fedeli: So let me ask you: You assumed Jamison Steeve's responsibilities following his departure—is that correct?

Mr. John Brodhead: I wouldn't say it was a clear handover in terms of division of responsibilities. I think the principal secretary and my role—there was a restructuring of the office, so it wasn't apples to apples.

Mr. Victor Fedeli: When did you learn of the various costs associated with the cancellations, both cancellations?

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Mr. John Brodhead: Sorry, I wouldn't have—I'm trying to understand the question. Are you saying—

Mr. Victor Fedeli: When did you find out what the costs were of the cancellation of both power plants?

Mr. John Brodhead: When the negotiations were completed on both of them.

Mr. Victor Fedeli: And when did you become aware that the cost of cancelling Oakville would be significantly more than \$40 million?

Mr. John Brodhead: I understand that the Auditor General is reviewing it now, so I'm sure he will have—

Mr. Victor Fedeli: No, no. I'm not asking about the auditor. I'm asking about you.

Mr. John Brodhead: No, no.

Mr. Victor Fedeli: When did you become aware that the cost to cancel Oakville was more than \$40 million?

Mr. John Brodhead: The first time I had a sense or a sinking feeling it would be more was during Ms. Butler's testimony to this committee.

Mr. Victor Fedeli: Okay. Because she talked about "buckets."

Mr. John Brodhead: She talked about things that I'd never heard of, and that made me worry that the costs could be higher.

Mr. Victor Fedeli: Okay. And when did you understand that the cost in Mississauga would be more than the \$190 million the government claimed it would be?

Mr. John Brodhead: When the Auditor General came out with his report.

Mr. Victor Fedeli: Okay. And when did the Premier become aware of these so-called "buckets" of costs?

Mr. John Brodhead: Sorry; I'm not sure what you mean by "buckets."

Mr. Victor Fedeli: The word from the OPA when they described the fact that there were "buckets" of costs; "different buckets of costs" was their language.

Mr. John Brodhead: I'm actually to this day not clear on what they meant by that, so if—

Mr. Victor Fedeli: But you used "buckets" earlier today.

Mr. John Brodhead: Yes. I was referring to it in the Mississauga context of having a recoverable and non-recoverable on Mississauga.

Mr. Victor Fedeli: So you knew that there were taxpayer costs and you knew that there were ratepayer costs?

Mr. John Brodhead: No. In our mind, there was one cost. The way we decided to pay for that would have been either tax-based or rate-based, but it was one cost that we had to—

Mr. Victor Fedeli: And you do know now, of course, that that was false.

Mr. John Brodhead: Sorry?

Mr. Victor Fedeli: That that cost number that you provided was false.

Mr. John Brodhead: I do think the Auditor General is a good source on the costing on Mississauga, and I look forward to hearing what—

Mr. Victor Fedeli: So your number is wrong and his number is right.

Mr. John Brodhead: I think there was a difference of opinion between the Ministry of Energy, the OPA and the Auditor General.

Mr. Victor Fedeli: So you think that \$100 million was a difference of opinion?

Mr. John Brodhead: Sorry, the \$100 million? From \$190 million to—

Mr. Victor Fedeli: The difference between \$190 million to \$275 million is a difference of opinion?

Mr. John Brodhead: No. I think we got advice from the Ministry of Energy and the OPA that certain costs were recoverable. The Auditor General decided otherwise, and we take his—

Mr. Victor Fedeli: He didn't decide otherwise; his facts proved otherwise—the facts that you held back from us through all of these emails that have been deleted and destroyed.

Mr. John Brodhead: If it was that clear, I'm assuming the ministry would have given them to us that way.

Mr. Victor Fedeli: Your title was deputy chief of staff for policy and cabinet affairs.

Mr. John Brodhead: Yes.

Mr. Victor Fedeli: When did cabinet learn of the costs?

Mr. John Brodhead: My recollection is, the costs would have gone to treasury board and then been approved by cabinet following that.

Mr. Victor Fedeli: So we have that treasury board document that says this thing, both cancellations, could cost \$900 million. Would that be when cabinet first learned that this was almost a billion, or was it before that?

Mr. John Brodhead: The document you're referring to was a February 2012 document which was a worst-case-scenario position the treasury board put together, not actually as a result of the negotiations; treasury board would have then looked at the negotiations and the costs within that.

Mr. Victor Fedeli: Oh, I think it is a worst case for Ontario. I'm not saying that that will be the worst case for Ontario, the \$900 million. Did cabinet know before that that there were two sets of costs, or that this was

more than the \$40 million that the government was sticking with?

Mr. John Brodhead: I don't know what you're referring to, the two sets of costs, but cabinet would have been aware of the \$40-million number through treasury board approval and then cabinet ratification, is my understanding.

Mr. Victor Fedeli: So the \$900 million—is that the first time that cabinet would have become aware that this was more than the \$40 million that was being claimed?

Mr. John Brodhead: I think it's a bit of apples and oranges here. The \$900 million was February 2012, worst-case scenario. I understand that was made public in May of this year—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. John Brodhead: —and that Minister Sousa and Mr. Milloy have spoken to that being a—

Mr. Victor Fedeli: Yes, but I'm not asking about them; I'm asking you. This \$900 million wasn't a number that came out of thin air. This is after consultation with energy people, OPA: \$900 million.

Mr. John Brodhead: But it was prior to the negotiations, so it really was an absolute worst-case scenario that the Ministry of Finance does on a number of files throughout the year.

Mr. Victor Fedeli: So when did cabinet know that the cost of cancelling Mississauga and the cost of cancelling Oakville were higher than the \$190 million and the \$40 million?

Mr. John Brodhead: I assume that cabinet would have learned about Mississauga when the Auditor General's report came out. They would have seen that new costing. I think, on Oakville, we're still waiting to hear the Auditor General's number. The number we still have is \$40 million.

Mr. Victor Fedeli: No, no, I'm not asking about what the number really is going to be; I'm asking, when did they know the number was more than \$40 million?

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Thank you, Mr. Brodhead, for your presence.

That concludes the morning session. Committee is in recess until 1:45 p.m. sharp.

The committee recessed from 1255 to 1349.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the meeting into session once again.

Before offering the floor to two of our table officers, I would, with your permission, like to welcome the honourable Paul Rosenthal, who is visiting us from the Colorado State House, representing House district 9—from the Democratic Party, which we understand and approve, of course. With that, welcome. Mr. Rosenthal, on behalf of the committee, I would just extend to you not only, once again, welcome, but invite a reciprocal invitation for all members of the committee to Denver.

Mr. Jeff Parker would just like to update the committee on some research issue.

Mr. Jeff Parker: Thank you, Mr. Chair. Mr. Bisson at the last meeting asked for clarification regarding what was backed up on the backup tapes held by the Ministry

of Government Services, whether it was just the exchange server or the Enterprise Vault. I contacted the Ministry of Government Services, and they have told me that they will deliver their answer the next time they deliver information to the Clerk on the various undertakings they're on. So that's the update on where we are with that.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, questions?

Mr. Peter Tabuns: Did they give a timeline on that?

Mr. Jeff Parker: They said that they would give this information on the timeline that they had established with the other documents. That, I believe, was two weeks, based on what the committee's request was.

Mr. Peter Tabuns: And that will be next—

Mr. Jeff Parker: In theory, it should be by the next meeting or around about there.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Parker. Thanks, Mr. Tabuns.

Mr. Fedeli?

Mr. Victor Fedeli: Before we begin, I just have a question. Do we know anything about the email dump that was promised by the deputy minister last week? Mr. Constante was here and said that you will have email by the end of the week or early next.

The Clerk of the Committee (Ms. Tamara Poman-ski): I haven't received anything.

The Chair (Mr. Shafiq Qaadri): So we'll have that pursued if you'll just clarify what we're referring to directly afterward.

Mr. Victor Fedeli: He's the one who brought it up; I don't know what we're referring to.

The Clerk of the Committee (Ms. Tamara Poman-ski): I haven't received anything yet. As soon as I receive it, I'll get it to you.

The Chair (Mr. Shafiq Qaadri): Thank you.

Just before we invite our final witness of the day to present, I'm going to offer the floor to our legal counsel, once again, to make clear to all members and beyond, that rulings emanating from this Chair are based on procedure and parliamentary doctrine and legal foundations.

Mr. Sibenik.

Mr. Peter Sibenik: Thank you, Chair. The issue that was raised in this morning's meeting was the political-context type of question versus the question dealing with the Speaker's email—the discrepancy, perhaps, or the—

Mr. Gilles Bisson: Point of order.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson?

Mr. Gilles Bisson: Could we deal with this after we've done the testimony? We can do that in camera after.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson, if we—

Mr. Gilles Bisson: Yes, because I'd like to get the staff people—

The Chair (Mr. Shafiq Qaadri): I have no problems with that, if that's agreeable to all members of the committee. But then it—

Interjection.

The Chair (Mr. Shafiq Qaadri): Did you say “in camera”?

Mr. Gilles Bisson: Yes. We're just going to have a discussion in regard to the whole process. That's fine.

Interjection.

Mr. Gilles Bisson: Yes, we'll do it in camera after, because all our staff here and stuff—

The Chair (Mr. Shafiq Qaadri): Fair enough.

MR. BRUCE CAMPBELL

The Chair (Mr. Shafiq Qaadri): Mr. Campbell, I invite you to please come forward. He's coming to us in his capacity as president and CEO of the Independent Electricity System Operator. You'll be sworn in. Please have a seat.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Bruce Campbell: I do.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Campbell. You have five minutes for your opening address, beginning now.

Mr. Bruce Campbell: Good afternoon. My name is Bruce Campbell. I'm the president and chief executive officer of the Independent Electricity System Operator, or IESO.

The IESO oversees the reliable and efficient operation of Ontario's bulk electricity system. Drawing on resources available for operation each day, we forecast provincial electricity demand for every five minutes, and through the wholesale electricity market that we administer, we ensure that those demands for electricity are met reliably across the provincial bulk power network. We also coordinate operations with our neighbours both in Canada and the United States.

Interconnected operation provides real benefits, but tomorrow's 10th anniversary of the 2003 blackout is a good reminder of interconnected obligations. As you may recall, in 2003 the blackout originated in Ohio but quickly spread to neighbouring states and provinces, resulting in an extended power interruption to more than 50 million people. The industry responded quickly to that event, has strengthened North America-wide reliability standards designed to prevent a similar occurrence and has made them mandatory and legally enforceable.

It's worth noting that at the time of the blackout, Ontario was the only North American jurisdiction where those standards were legally enforceable, and we remain actively involved in standards development and enforcement.

I've been with the IESO since 2000 and became president and CEO on May 1 of this year. I'm a member of the Law Society of Upper Canada, and, prior to

joining the IESO, a large portion of my practice related to a range of electricity system matters.

In my brief opening remarks today, I want to focus on the report that the IESO and Ontario Power Authority submitted to the Minister of Energy on August 1, and which Mr. Andersen and I forwarded to the committee last week. In response to a May 6 request from the minister, the two organizations developed 18 recommendations for an enhanced, integrated regional energy planning process and to improve how large electricity infrastructure projects are sited in Ontario.

The recommendations are focused on strengthening our processes in three core areas: first, strengthen processes for early and sustained engagement with local government to the public; second, provide local governments and communities with greater voice and responsibility in planning and siting; and, third, support inter-ministerial coordination.

These core recommendations reflect what we heard during our extensive consultation process, a process that included 18 municipal and community meetings in nine regions across Ontario, and during which we heard directly from more than 1,200 people and received more than 60 submissions. In addition to individual views, many of the people we heard from represented broad interests.

Our feedback and research reinforced a fundamental observation: For siting to be successful, it must be accompanied by robust planning. In fact, they are a continuum that should be seen as integral parts of the same process.

The 18 recommendations in this report are designed to achieve the following objectives:

- bring communities to the table;
- link local and provincial planning;
- reinforce the planning/siting continuum; and
- enhance electricity awareness and improve access to information.

Before I conclude, there's one area of particular interest I'd like to highlight, given our responsibilities at the IESO, and that's the importance of balancing the provincial electricity system needs for reliability with the needs and preferences of the individual communities. Robust electricity planning and siting has an important role to play in identifying cost-effective and locally appropriate solutions to maintaining reliability and contributing to sustainability.

In closing, I want to recognize the effort of the OPA and IESO staff who made this report happen, and to thank both them and the many Ontarians who participated in this process, giving up their own time to provide us with valuable input that I hope they will see reflected in our report. And, as you're aware, we were also asked to consider any recommendations made by this committee. We hope our report assists with your deliberations, and we welcome your review and comment on our recommendations as we address implementation proposals.

Thank you, Mr. Chair. That's my statement.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Campbell.

To the government side, Ms. Albanese.

Mrs. Laura Albanese: Well, thank you, Mr. Chair, and thank you, Mr. Campbell, for being with us this afternoon.

As you know, Mr. Campbell, part of the mandate of our committee is to provide recommendations on how we can improve the siting process for large-scale energy projects. We've asked you to be here today because as president and CEO of the IESO, you have a long career working in the energy sector, and your organization, as you mentioned, has recently completed a set of joint recommendations with the OPA—which we have right here—on how to improve the siting process in the province.

So I guess I would ask you to kindly start by talking a little bit about your career in the energy sector, first and foremost.

Mr. Bruce Campbell: My career in the energy sector goes back into the very beginnings of my private practice as a lawyer in the province. I've been involved in a number of planning and siting projects, primarily with the previous Ontario Hydro. That extended back to the Royal Commission on Electric Power Planning, and some specific projects that flowed out from that effort, in particular, some of the major 500 kV lines around the province. I acted for Ontario Hydro, again, on the demand-supply plan exercise, again, looking at broad provincial planning, and I've also been involved in, as I say, a number of transmission line approvals as well.

Mrs. Laura Albanese: That's impressive. You obviously have considerable experience and, I'm sure, have witnessed a great deal of change through the years. Could you please talk about the reliability of the energy system as it stands today?

Mr. Bruce Campbell: I think the reliability of the power system today is certainly in much better shape than it was at the time of the blackout. I say that not so much because of the facilities but because of the effort that is going into the reliability standards across North America. Following the blackout—as I indicated, Ontario had enforceable reliability standards at that time; we were the only jurisdiction that did, but following the blackout, there was a considerable effort in the States to ensure that those reliability standards were enforceable across all of North America, and certainly across all of the States.

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I think it was, though, two years—Congress passed a bill that extended reliability standards, the umbrella of being mandatory and legally enforceable.

Really, the work that has gone on since then has been to tighten up those standards, make sure they're being consistently applied, make sure that there's good compliance and enforcement with those standards.

I've had the pleasure of also serving on the board of the Northeast Power Coordinating Council, which looks after all of that work for the northeast area—northeast

section, if you will—of North America: Ontario, Quebec, Manitoba and Nova Scotia. So I've had the pleasure of participating actively in that throughout that process.

Mrs. Laura Albanese: Coal-fired generation used to be a major part of Ontario's energy system. How reliant on coal was Ontario, previous to the effort to shut down these plants?

Mr. Bruce Campbell: It was a considerable part of the generation investment that was here in Ontario, and it played a very important role at that time.

Mrs. Laura Albanese: I wonder if you can tell us a little bit about how the energy sources have changed and how the system has adapted to new sources, such as renewables.

Mr. Bruce Campbell: Of course, picking up on your question about coal, coal is essentially very close to gone in the province now. I think it was something like 2.8% of the energy that was produced in 2012 came from coal. Most of it will be shut down by the end of this year. That has been replaced by, of course, an investment in gas plants, investment in wind, and investment in solar. From the operator's point of view, what we've been doing is putting in place the tools and learning how to operate a very differently configured system, one that we can operate just as reliably but one that is very differently configured from what had been the practice for many years—and very low-carbon.

Mrs. Laura Albanese: Thank you for those answers. I would like to ask you now some specific questions about the IESO and OPA's consultation process during the preparation of your report. How many consultations were held?

Mr. Bruce Campbell: There were 18 meetings held in nine regions across the province. There were a large number of then individual meetings or submissions from associations and groups that wanted to speak with us. There were a couple of other efforts made. There was the opportunity to submit comments on the website, and there was on the website a survey that we conducted as well.

So there was a wide range of opportunities for people to talk to us in the course of considering the mandate that we've been given.

Mrs. Laura Albanese: As you went throughout the province, which communities did you visit?

Mr. Bruce Campbell: I can give you the list. It's in our report at—let me just find it.

Mrs. Laura Albanese: Just a ballpark figure would be fine.

Mr. Bruce Campbell: It's at page 29 of our report. We went to Sudbury, Niagara, Ottawa, GTA north and west, Guelph, Windsor, Oakville, GTA east, and Thunder Bay.

Mrs. Laura Albanese: Who came out to the sessions? Was it stakeholder groups or members of the public or both?

Mr. Bruce Campbell: It's stakeholder groups—there were usually two sessions, one to which there had been an invitation list to the local MPPs, to associations and

groups, to municipal representatives, planners. Of course, the local electric distribution companies were represented there as well.

Then there was an open session, always a second session—

The Chair (Mr. Shafiq Qaadri): Mr. Campbell, just before you begin, I would once again invite all members to focus on the mandate and the scope of this committee. We seem to be drifting a bit, Ms. Albanese.

Mrs. Laura Albanese: Well, I think that giving recommendations on improving the siting process in the province would be part of it. That's why I'm so interested in the report.

Actually, I was about to ask, what were the major themes—

Mr. John Yakabuski: The IESO has nothing to do with siting—

Mrs. Laura Albanese: —that you heard from people during the consultations?

Mr. John Yakabuski: Ms. Albanese?

Mrs. Laura Albanese: Yes?

Mr. John Yakabuski: The IESO does not deal with siting.

The Chair (Mr. Shafiq Qaadri): Thank you. This is not a time for cross-debate here.

Mr. Campbell.

Mrs. Laura Albanese: That's what we are dealing with.

Mr. Bruce Campbell: I'm sorry; what was the question?

Mrs. Laura Albanese: What were the major themes that you heard during the consultation?

Mr. Bruce Campbell: The major themes during the consultation were that people wanted to be involved early in the planning for these facilities, that they saw the planning and moving into the siting of facilities as things that should not be separate but, in fact, ought to be quite integrated. There was a real feeling that the concerns of the local community ought to be fully taken into account in making recommendations as to what kinds of facilities should be invested in and as to where they were located.

The other thing I'd add to that is, there was a real interest in, "What are the options? Don't just come to us with a solution already made. What are the options that are available—everything from conservation, demand response etc. Let's talk about all of the options before we settle on one, and then let's try to settle on one that the community feels works best for its own local supply."

Mrs. Laura Albanese: One of the focuses that this committee has been hearing from the local communities, from Oakville and Mississauga—to get a better appreciation about what they went through before the two gas plants were relocated. Did you also hear from members of those affected communities during your consultations?

Mr. Bruce Campbell: Yes, absolutely. That was one area where I went out personally with Colin and met with those groups: C4CA, CHIP. We met with those groups and really had the opportunity for quite an in-depth discussion about what they felt would have worked. It

was quite interesting. They really did contribute to the view that we arrived at: that there needed to be much better integration with municipal planning; that it didn't make sense for infrastructure for municipalities to be done independent of electricity planning—they seemed to be on two separate paths, and they thought they should be integrated—and that the kind of concerns that should drive siting decisions ought to be much more than simply what is the lowest cost for a particular application, but what would provide the best overall solution for the community.

Mrs. Laura Albanese: Would you have any suggestions on how we could strengthen our engagement with local governments and communities? What steps need to be taken to ensure that the local voices are being heard?

Mr. Bruce Campbell: Yes. There have been some steps already taken to improve the process. The OPA has a regional planning process, where you're looking at options, that it engages in. What we heard from many of the communities, including some of the folks at Oakville, was that that process provided a pretty good foundation for moving forward. But what they wanted was to be sure that they had better municipal coordination, a continuum of planning so that, as I said earlier, the planning decisions flowed naturally into the choice of solution and then into the procurement side; you didn't just start with the procurement.

They were very keen, as well, to have good coordinated participation from the relevant ministries. That was something that they felt would enhance the process quite a bit: better coordination with planning, certainly in the provincial planning statements—and we've made some recommendations around that—but also just generally when you look at transportation and health. All of the different ministries that are touched on during the course of that siting debate should all be participating and making sure that the knowledge and views from those quarters are at the table and able to be discussed with the community as well.

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Mrs. Laura Albanese: One issue that we've heard a lot about from local advocates at this committee is buffer zones. For example, in the case of the Mississauga and the Oakville site—I think it was for the Oakville site that we had Frank Clegg from Citizens for Clean Air, who was very adamant about buffer zones and testified that the proposed site had no buffer zones to ensure the safety of the residents. Is that something that you also heard about? Does your report touch upon buffer zones?

Mr. Bruce Campbell: Yes, we did hear about that, and I think if you looked at our recommendation—I think it's number 8—we talk about the guidelines that are currently available from the Ministry of the Environment. It was felt that they provided quite a useful model, that they could in fact be expanded to cover appropriate buffer zones, minimum distance of separation from sensitive areas and so on. So that mechanism was recommended to us, and it has been incorporated into the recommendations that we've made to the minister.

Mrs. Laura Albanese: In other recommendations which you mentioned earlier, you suggest the creation of these regional electricity planning advisory committees. Could you explain a little more in detail your vision for these committees and the role that they can play in the planning and siting process?

Mr. Bruce Campbell: Yes. It's very similar to something that we at the IESO do. We have a stakeholder advisory committee where there are representatives from our stakeholders. For any significant issues that we're facing at the company, we have a discussion with that stakeholder advisory committee. Our board attends those discussions, so it's quite a rich opportunity to talk about opportune issues that may be arising.

We are recommending that an advisory committee be set up for these regional consultations, and it should start with having a conversation with community representatives about: "Here's the way we see the issue. Do we have the right people at the table? Do we have the right list of issues that we think need to be addressed?" and working with that committee and accepting the guidance of that committee through the process.

What we're trying for here is some continuity and some ongoing conversation. The way I put it is, what we want to do is we want to build some trust that this is a real two-way conversation. That's what the advisory committee is intended to do.

Mrs. Laura Albanese: The report also recommends that the Ministry of Energy and the OPA should enhance supports for community energy planning, as you said, but that comprehensive energy planning should include consideration of electricity as well as other needs such as natural gas, district energy and transportation.

Mr. Bruce Campbell: Yes, and again, that's looking at it in the municipal context. Take a look at that energy infrastructure and consider how you want to develop it in the same way you consider the balance of the infrastructures that you have to deal with: what is your growth going to be; does it give you opportunities to take advantage of a particular form of technology—district heating or combined heat and power; does the community think there should be more conservation etc.

So building up a community energy plan—I think there's a very good example in the province around that happening in Guelph, where Guelph has really worked hard to build up that kind of community energy plan. One of the organizations involved in the consultation, QUEST—Quality Urban Energy Systems of Tomorrow—has adopted as a mission to have energy plans developed for every municipality in Canada by 2050. That's their kind of long-term vision. But they are big believers and proponents and were quite persuasive about the benefits of those plans, and there are some steps that are being taken in Ontario now to assist in developing those plans.

Mrs. Laura Albanese: It's a comprehensive approach, it seems to me.

Mr. Bruce Campbell: It's a comprehensive approach, and it's one that doesn't just start and stop. That's the other lesson we learned: Don't just start and stop these

things. There should be some sort of continuing discussion. The municipal planners really pointed us to that process, because the cities, municipalities, are quite used to engaging in ongoing discussion with their communities about planning matters. We think it was a good model for electricity as well.

Mrs. Laura Albanese: Any specific recommendations on enhancing the links between the municipalities and the province, let's say?

Mr. Bruce Campbell: Certainly in that area, what we pointed to was making sure that the provincial policy statements and things like Places to Grow—all of that should better reflect the fact that electricity is essential for all of those goals to be met. We think that should be strengthened, and therefore paid more attention in municipal planning.

Mrs. Laura Albanese: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Albanese. To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. Mr. Campbell, I'm going to ask you the same two questions I ask most witnesses who come here.

Do you know how much it cost to cancel the Oakville power plant?

Mr. Bruce Campbell: No. I'm aware of the figures that are in the press, but not beyond that.

Mr. Victor Fedeli: Do you know who was involved in the cover-up of the documents for the Oakville power plant and the Mississauga power plant?

Mr. Bruce Campbell: We have no knowledge of the documents or—any direct knowledge of that. Again—

Mr. Victor Fedeli: Again, those are the same two questions I ask most people: Do you know how much it cost, and who ordered the—

Interjection.

Mr. Victor Fedeli: Thank you very much. I ask the same two questions: How much did it cost to cancel the gas plant, and who ordered the cover-up? You say you have no answer for either of those.

Mr. Bruce Campbell: I do not.

Mr. Victor Fedeli: That's fair.

You have documents, Clerk, to hand out for us.

I want to read into the record—it's not a very nice letter, but it's a letter that we received and have forwarded to the Ontario Provincial Police. It's addressed to me.

"Oakville Gas Plant and Emails Delete of Independent Electricity System Operator." This was stamped in my office June 17, 2013, so it's just less than a couple of months ago that we received this and forwarded it to the OPP.

"The current executive management at government electricity agency Independent Electricity System Operator (IESO) who runs the provincial electricity system is in a major panic of destroying public documents now. All of a sudden, last week (first week of June 2013), all the staff was ordered to delete all the emails permanently which are 38 months or more old. Not allowed to back up

those emails or forward to anybody, copy to CD, USB or any other server.

"Why this now and why this date? This is a major cover-up of the public documents, destroy any evidence of wrongful communications, concealing the absolutely fake analysis they did in 2010/2011 and blunders of the IESO on the Oakville gas plant fiasco. The IESO is scared all hidden dirt will emerge. This 38 month coincides with IESO's performance of the technical analysis of the Oakville gas plant. The staff was strictly asked to fudge numbers so the gas plant proposal looked technically viable. The IESO is scared emails will expose their false conclusions. Knowing gas plants were politically hot potatoes, 2010/2011 period director"—and the name was actually physically cut out in the paper—"supervisor of system analysis"—and the rest of that letter was cut out—"ordered staff to make up numbers and enforced Oakville gas plant look much better than it is to pacify public protest and collectively kept wrong assumptions under the rugs. This was fundamentally criminal. Both of them never understood the consequence. They were highly ambitious and ready to do anything unethical to politically perform." It goes on to say, "Today they are chief operating officer and a manager, respectively. These email wipeout is highly criminal, a gross violation of integrity and an attempt to hide the truth."

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"Another reason for email delete is it showed true costs of analysis. The staff was asked [to] make bogus conclusions against engineering principles and unethical assumptions. Today same management is trying hard to delete all those correspondence and also force engineers to obtain PEO status ASAP so management can justify wrongful analysis at the expense of engineer.

"This is all criminal and should be investigated. Public trust must be gained and duplication of functions of OPA and IESO, almost 50"—I think it's per cent—"of the work must be eliminated."

I would ask you to comment on this letter that we received. What—

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, I presume it's a point of order?

Mr. Bob Delaney: It is a point of order. What is the source of this document, and—

Mr. Victor Fedeli: It came in a brown envelope and was turned over to the OPP.

Mr. Bob Delaney: Well, it's actually, it says, yours. Did you write it?

Mr. Victor Fedeli: I'm sorry?

Mr. Bob Delaney: Did you write it? Because it has got your address on it.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen.

Mr. Victor Fedeli: It's written to me.

The Chair (Mr. Shafiq Qaadri): Mr. Campbell, you have the floor.

Mr. Victor Fedeli: It's written to me, not from me.

They're making a lot of accusations in here, and I would ask you to comment, especially about the emails being deleted and the 38 months, if you could, Mr. Campbell. You can take all the time you need.

Mr. Bruce Campbell: I can tell you unequivocally that the allegations made in this letter are false.

Mr. Victor Fedeli: Thank you.

Mr. Bruce Campbell: And I can tell you that not one email has been deleted.

Mr. Victor Fedeli: Okay. Perhaps, then—we have no email from you or from the IESO, to the best of my recollection—and I stand corrected, whether we have any information from the IESO with respect to the Oakville gas plant, or the Mississauga gas plant, for that matter. Would you have been asked in the past to turn over any email?

Mr. Bruce Campbell: No, we've never had such a request. And when I say that no email has been deleted, I mean that.

Mr. Victor Fedeli: Yes, I appreciate that. I respect that.

Mr. Bruce Campbell: You know, people may have deleted personal emails at some point in time. But I can assure you—I can guarantee you—that every email that has come into or out of the IESO since October 2010 exists today, and that every email prior to that date exists, unless, up to that point of time, somebody had taken an email, deleted it and—I think the phrase that has been used here is “double delete”: Delete once and delete again.

Mr. Victor Fedeli: Yes.

Mr. Bruce Campbell: If somebody had done that prior to 2010 with an email, I don't think I can guarantee you that we have that email.

Mr. Victor Fedeli: So you have backups?

Mr. Bruce Campbell: But apart from that, I think we have every other email.

Mr. Victor Fedeli: Would you have a backup system? Is that part of what you have?

Mr. Bruce Campbell: Yes, absolutely. The way our backup system works now is that emails are captured on their way in. We capture them and save them before they even get to the recipient.

Mr. Victor Fedeli: Okay. At the end, then, Chair, we will have a motion coming forward for the IESO, and it will be more broad. It won't have all of the code words. It will just be basically everything and anything to do with the Oakville gas plant and the Mississauga gas plant for the years October 2010, 2011, 2012 and 2013.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Victor Fedeli: Thank you.

The Chair (Mr. Shafiq Qaadri): Now the floor goes to the NDP, to Mr. Tabuns.

Mr. Peter Tabuns: Thank you very much, Chair. Thank you for being here, Mr. Campbell. How long have you been CEO? Unfortunately, the notes here weren't clear as to when you took up—

Mr. Bruce Campbell: May 1.

Mr. Peter Tabuns: May 1 of—

Mr. Bruce Campbell: This year.

Mr. Peter Tabuns: This year? And prior to May 1, what was your role?

Mr. Bruce Campbell: My position was vice-president, resource integration. I held that position since 2009.

Mr. Peter Tabuns: Can you describe what “resource integration” means?

Mr. Bruce Campbell: Sure, I'll give you an example. For instance, as new resources are added to the system, we have to do system-impact assessments, change our models of the system, and make sure that those facilities can be incorporated reliably into the power system. We do all of that work. We do calculations as to how much power, for instance, can be put through any particular location in the system—what the system limits are on every particular configuration that we see for the system. We do all the preparatory work to operations. We do all of the analysis around adding new systems. We identify what needs to be done to operate those facilities.

My responsibilities also extended to the administration—that is, the management—of the evolution of the IESO-administered markets, the electricity market in Ontario.

Mr. Peter Tabuns: Okay. Thank you. That's a useful background. Now I have a better understanding of where the pieces come together.

When the Greenfield South plant was contracted—I think 2004 was the RFP and the contract—what were the peak and the base load numbers for the southwest GTA? I appreciate you may not have studied that before you came here, and you may not be able to answer me on the spot, but just in case.

Mr. Bruce Campbell: You are correct. I don't carry those numbers on my fingertips. But I can tell you that if you want a complete history of the IESO's view of the load requirements in that area, you will find on our website our 18-month outlooks—

Mr. Peter Tabuns: I did look at those—

Mr. Bruce Campbell: They're published every four months. Through the whole list of those and some documents that we used to do before long-term planning went to the OPA—that is, the Ontario reliability outlook and the 10-year outlooks, again, all on our website—the conclusions as to what issues there might be in serving load in the southwest GTA are captured. We make all of that information public as a matter of course.

Mr. Peter Tabuns: What I've asked, because I went through, and my research skills are not as good as I would like to them to be, and my technical skills are more limited than I would like—if you would give us an undertaking to report back to this committee the load, both peak and base, in the southwest GTA. I think it would be 2004, when Greenfield was committed. Then I'd like to see what the peak and base load were in 2009, and the projected peak and base load for 2012.

Mr. Bruce Campbell: So it's the peak load and then—

Mr. Peter Tabuns: The base.

Mr. Bruce Campbell: By “the base,” you mean the amount of energy that would be consumed in the area?

Mr. Peter Tabuns: Ah, good question. Minimum demand, usually in the middle of the night.

Mr. Bruce Campbell: Oh, minimum.

Mr. Peter Tabuns: Yes, the total annual demand. When I was going through a few reports the other day, Oakville saw its demand for power drop over the last decade. I saw that Mississauga had a drop in power purchase by about 20% from 2008 to 2009.

For a period that was of great interest to us—and I’m looking forward to seeing your figures—it looks like there was an ongoing drop in demand in the southwest GTA, even though all of the discussions we’ve had about these power plants has been predicated on an increased demand.

If you could provide us with those figures from the time that the Greenfield South plant started until 2012, that would be extremely useful for us.

Mr. Bruce Campbell: We can do that. I don’t think your recollection and mine of the pattern are quite the same. But I don’t have the numbers with me, so we’ll get you the numbers.

Mr. Peter Tabuns: Well, I did a partial search, just looking in annual reports from public utilities. I gather that the southwest GTA is the southern part of Oakville, the southern part of Mississauga, part of Brampton and part of the west end of Toronto. Is that correct?

Mr. Bruce Campbell: We look at this in terms of what is served by the 230 kV lines coming west from the Manby station.

Mr. Peter Tabuns: Right.

Mr. Bruce Campbell: So what we’ll do is, we will carefully define the electrical portion of the system that we’re talking about, and we’ll make it clear exactly what area we’re talking about, and we’ll provide those numbers.

Mr. Peter Tabuns: Okay, that would be great. I would appreciate that.

Was the IESO contacted about the need for the Oakville generating station?

Mr. Bruce Campbell: I think certainly we had published information about the requirements for additional load-meeting capability in that area.

I think for the Oakville plant, it really had those sort of two purposes. It had a purpose that was more aimed provincially, at meeting provincial load, plus it would meet local requirements and allow some transmission that otherwise was being considered to be deferred. That was the context for that plant.

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Mr. Peter Tabuns: Were you in fact directly consulted by the Minister of Energy or his staff prior to an RFP going out for a plant in Oakville?

Mr. Bruce Campbell: We would have, again, identified the need for facilities in that area, and our conclusions are documented in that material that I referred you to on the website. As I say, when we do those analyses,

when we reach a conclusion on something like that, we publish that and put it in the public domain.

Mr. Peter Tabuns: So other than publishing a document, the Ministry of Energy and the Minister of Energy did not come to you and say, “What’s your analysis?”

Mr. Bruce Campbell: Well, we would have told them because we briefed them. As we’re putting these out, we brief them on what they contain. The whole point is to say, “Okay, in this particular area, some thinking needs to be done about addressing a problem.” Then in this case, of course, that longer-term planning is done by the OPA, once it was formed. Some of the earlier decisions were made by the ministry.

Mr. Peter Tabuns: Can you tell us what the total capacity of new gas-fired generating stations built in the southwest GTA is? Since 2004, I think a number of plants have gone in.

Mr. Bruce Campbell: New gas plants?

Mr. Peter Tabuns: Yes.

Mr. Bruce Campbell: Apart from the two that are cancelled, I’m not aware of any having gone in there.

Mr. Peter Tabuns: So Simcoe and Halton Hills—none of those would be counted into this?

Mr. Bruce Campbell: Not in the southwest GTA. When I’m using that phrase, I’m using the load that’s basically served by that 230 kV facility that runs west from Manby.

Mr. Peter Tabuns: So any plants that have been built in Mississauga or Oakville or region weren’t actually built to serve the load that we’re discussing when we talk about the Mississauga and Oakville plants. Is that correct?

Mr. Bruce Campbell: Not that particular load; no, that’s right.

Mr. Peter Tabuns: Okay. Were you contacted by the Minister of Energy or his staff when they were deciding to cancel the Mississauga plant?

Mr. Bruce Campbell: No, we were not.

Mr. Peter Tabuns: The Premier’s office?

Mr. Bruce Campbell: No.

Mr. Peter Tabuns: The Premier’s campaign staff during the 2011 election: Did they call you and say, “We’re looking at cancelling this Mississauga plant. How is that going to play out in terms of load?”

Mr. Bruce Campbell: No. I think the first we were advised—Terry Young, our vice-president of communications at that time, received a call virtually as the announcement was being made.

Mr. Peter Tabuns: Just to tell him it was being made?

Mr. Bruce Campbell: Yes.

Mr. Peter Tabuns: They didn’t check with him as to whether or not there would be load implications from this?

Mr. Bruce Campbell: No, but again, because we publish this material, and it was quite clear that one of the effects of the plant would have been to defer transmission that would otherwise be required, certainly the

ministry would have been quite aware that if the plant went away, that need would come forward again.

Mr. Peter Tabuns: The plant for Oakville: The RFP went out and the contract was signed in September 2009. A year later, September 2010, the plant was cancelled. So did load projections radically change in those 12 months?

Mr. Bruce Campbell: I don't think load projections for the particular area that we're talking about changed dramatically. The numbers that we're pulling up for you will reveal how good my memory is on that. I think over that period, though, we saw a decline in Ontario-wide load. Certainly, if I have my economic recession dates correct, that would have been apparent at that time.

Mr. Peter Tabuns: So when they made the decision—

Mr. Bruce Campbell: Or load gross decline, let me put it that way. Again, there are some absolute values in all of this. Again, all of those numbers are public.

Mr. Peter Tabuns: So when the decision was made in August/September 2010 to cancel the Oakville plant a year after a contract had been signed, did the Minister of Energy or his staff or the Office of the Premier contact your office and say, "What's the story here?"

Mr. Bruce Campbell: No.

Mr. Peter Tabuns: Okay. The plants were cancelled and they're being built elsewhere. I understand that there have been ongoing issues that you've had to manage around surplus power in Ontario.

Mr. Bruce Campbell: Yes.

Mr. Peter Tabuns: Did you think that building these plants elsewhere was necessary for Ontario's demand?

Mr. Bruce Campbell: I don't think it's going to be possible to answer that question for some time. Electricity planning is the long-term planning of facilities. It has to deal with things like forecast error, so there are always going to be times when you haven't called it perfectly.

Mr. Peter Tabuns: I understand that.

Mr. Bruce Campbell: When the planning—you end up in a bit of surplus or some surplus; you end up, as we did in 2003, where we were importing heavily. That's always subject to those vagaries.

I think in this particular case, in the nearer term, that question will be answered, depending on the scenario that's chosen for a nuclear refurbishment. Depending on how much nuclear is out of service at any particular point in time in that nuclear refurbishment program, then the need for this and the balance of the gas fleet will be greater or lesser.

Mr. Peter Tabuns: So as of the time the decision was made, it wasn't clear whether this would add to surplus or be necessary; is that correct?

Mr. Bruce Campbell: I think in the short term, we're in a position where there is considerable generation on the system.

Mr. Peter Tabuns: Yes.

Mr. Bruce Campbell: We're not short of generation.

Mr. Peter Tabuns: No.

Mr. Bruce Campbell: And it's clear that just looking at it from that perspective, there's a question as to how

much generation is the right number. There's always that question.

Mr. Peter Tabuns: What's the North American standard for generation reserve?

Mr. Bruce Campbell: Long-term planning: around 20%.

Mr. Peter Tabuns: And I gather the old—

Mr. Bruce Campbell: A little more than that, actually.

Mr. Peter Tabuns:—Ontario Hydro had about 30% reserve, was my recollection.

Mr. Bruce Campbell: I'd be surprised if it was that high for planning purposes. Certainly, it's higher than for operating purposes. Excuse me; my familiarity is primarily around the operation of the power system as opposed to the longer-term planning, but I think those are the numbers in the—

Mr. Peter Tabuns: And so how much do we have now in reserve?

Mr. Bruce Campbell: I haven't actually done the calculation.

Mr. Gilles Bisson: So in megawatts?

Mr. Bruce Campbell: We have an installed capacity of around 35,000 megawatts, but that is a bit of a misleading number because what it doesn't do is account for the capacity factor, for instance, of wind facilities, where on average they're producing about 30% of their installed capacity number each year.

Mr. Gilles Bisson: Can I just clarify? It does not include the wind capacity? So if you add up—

Mr. Bruce Campbell: No, the 35,000—if I haven't been clear, I'll try and make myself clear. It does include the wind capacity.

Mr. Gilles Bisson: If everything was generating at peak, it would be 35,000.

Mr. Bruce Campbell: If everything was generating at its full nameplate capacity, without any outages, we could be producing 35,000 megawatts of electricity—not going to happen.

Mr. Gilles Bisson: And what's the average demand? It's a heck of a lot less than that: about 17,000, 18,000—

Mr. Bruce Campbell: The peak demand this summer has been about 25,000 megawatts, and the peak demand ever on the system was a hair over 27,000 megawatts.

Mr. Gilles Bisson: And the average? A lot less than that.

Mr. Bruce Campbell: I don't have the—

Mr. Gilles Bisson: It's about 17,000, 18,000; right?

Mr. Bruce Campbell: We don't operate the power system in the averages, so I'm sorry; I don't have averages. But I think the point I was trying to make, if I could, was simply that all types of generation are discounted to a certain degree and they're discounted at different amounts at different years. We have a reliable capacity that we can plan on for wind in the summer; we have a number in the winter. For hydraulic, we have a number in the summer that is lower than the rest of the year. From an operator's perspective, what we're always looking at is what's available, what's likely to be available given the actual capacity that you expect out of

those things. So that 35,000 number is not one that you can readily translate into “that means we’ve got X amount more.”

Mr. Peter Tabuns: That’s why you have the reserve.

Mr. Bruce Campbell: We always want to have and we are required for operational purposes to have significant reserve on the system because if you get a contingency, you want to be able to keep power flowing while absorbing the effect of that contingency.

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Mr. Peter Tabuns: So compared to the 27,000 peak—and demand in the province overall has been dropping since 2006—we’ve got—what?—somewhere in the range of 35%, 40%, maybe 45% surplus capacity? Is that correct?

Mr. Bruce Campbell: I think I cannot agree with that as being surplus capacity, because I look at—

Mr. Peter Tabuns: Sorry; reserve capacity.

Mr. Bruce Campbell: It’s not really reserve capacity, because, for instance, in the case of hydraulic conditions in the summertime, I expect that of the nameplate rating—the potential theoretical maximum outfit of hydraulic positions for operational purposes—we discount that by up to 40%, depending on exactly which part of the summer we’re in. So in terms of real-life operation of the power system, you have to look at what you can expect by way of capacity at any particular point in time.

Mr. Gilles Bisson: But it would be safe to say that we have much more capacity now—surplus capacity—than we had in the past.

Mr. Bruce Campbell: I don’t know that I can confirm that. I mean, the surplus baseload generation is not a new phenomenon. I think back in the Ontario Hydro days—

Mr. Gilles Bisson: The good old days.

Mr. Bruce Campbell: —there was a time it was called UBG, “unutilized baseload generation.”

Mr. Gilles Bisson: But the point is that we’ve built far more capacity than we actually have demand for. As we look at the demand of hydro consumption in the province of Ontario, we’re generating far more in percentage than what we used to when it comes to surplus. In other words, we built a bunch of plants and do not necessarily have all the need for them.

Mr. Bruce Campbell: I think we have a healthy margin over the load. We’re operators—

Mr. Gilles Bisson: Thank you, Humphrey.

Laughter.

Mr. Gilles Bisson: That was a reference to Yes Minister.

Mr. Bruce Campbell: Yes, I—

Mr. Peter Tabuns: He got it.

Mr. Gilles Bisson: Some people may not have caught it.

Mr. Bruce Campbell: My spouse will be horrified to learn that I was referred to as Humphrey.

Mr. Gilles Bisson: He was the best character on that show.

Mr. Bruce Campbell: I agree.

Mr. Peter Tabuns: Better than the minister; we’ll say that.

How important is TransCanada Energy to the Ontario power system?

Mr. Bruce Campbell: TransCanada has facilities, and they’re exactly as important as every other market participant for us.

Mr. Peter Tabuns: It’s interesting, because as we went through all of these emails, it was pretty clear that being buddies with TransCanada was a pretty critical consideration for this government. So they’re no more important than any other producer?

Mr. Bruce Campbell: We operate the power system with TransCanada’s assets the same as we operate with other people’s assets.

Mr. Peter Tabuns: No, I understand that part. I don’t think you give the electrons any preference. How key a player are they in the private market?

Mr. Bruce Campbell: They have some big investment in the province, but as I say, we treat them exactly as we would any other market participants. There’s no preferential—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. Shafiq Qaadri): Government side. Mr. Delaney? Ten minutes.

Mr. Bob Delaney: Thank you very much, Chair. Mr. Campbell, I just want to very quickly go over that anonymous document that Mr. Fedeli read from and just make sure that we understand that. Would you describe quickly the information management policy that you’ve been developing at IESO?

Mr. Bruce Campbell: The information management policy that we’re developing at the IESO is aimed at really trying to manage the expense and processes associated with document retention. Our costs for information storage right now are growing at 30% a year. I mean, just think of the data that we have operating the power system: every five minutes, all across the province, all the bids and offers, all of the production information and all of the settlement information, in addition to all of our normal business records.

Yes, we have been considering what is an appropriate policy for document retention, and we are in the process of trying to ensure that we are going to put in place an appropriate policy for handling all of our information.

Mr. Bob Delaney: Was it as far back as the fall of 2010 that you instituted the policy of automatically archiving emails?

Mr. Bruce Campbell: I think there was—I don’t pretend to be an IT person—a change there that meant that everything was captured as it went in and out, as opposed to the way it had been captured before, and that really makes the difference. That means I can’t guarantee that there aren’t any what has been termed here as “double-deleted” emails. I can’t guarantee that. I would be astounded if there was anything significant around that, but that’s just my best judgement.

Mr. Bob Delaney: So the anonymous allegations read into the record by Mr. Fedeli are false.

Mr. Bruce Campbell: Yes. It's quite correct that we are taking a look at, and have done work on, a policy to deal with the rising costs of our document management, but that process has been put on hold. That was a decision that I took in part because we realized, when you folks heard from the privacy commissioner, that before proceeding to finalize and implement a policy, it would be a very good idea to have a conversation with the privacy commissioner, and that's what we plan to institute over the fall. Meanwhile, our information is just continuing to be collected and to grow.

Mr. Bob Delaney: Earlier in your testimony, you mentioned that you had done work on the Royal Commission on Electric Power Planning, which was established, I think, in 1977. Some years ago, I dug out the report of the Porter commission and I reviewed it. It painted an interesting estimated energy scenario for Ontario in the 1990s. Could you tell us whether that came to pass as written?

Mr. Bruce Campbell: No, it did not. Similarly, with the demand-supply plan later on, with the ongoing investment in nuclear that it contemplated, it didn't come to pass either.

Mr. Bob Delaney: In essence, looking at our energy future—that's something of an art as well as a science, isn't it?

Mr. Bruce Campbell: I would agree with the fact that it takes a lot of judgement, and in doing it, you want to look at options, you want to look at different scenarios so that your planning is resilient and can be regularly adjusted to reality as it unfolds.

Mr. Bob Delaney: In terms of the resilience of that plan and using what you called a "healthy margin over the load," which is in fact a very accurate term, would you say that that healthy margin over the load is going to be something we're going to need in years to come to finish our phase-out of coal and to ensure that we have sufficient and diverse capacity, such that we can provide for a power outage contingency such as what happened 10 years ago, or even last month?

Mr. Bruce Campbell: I think the margin that we have provides a reasonable level of insurance against the uncertainties associated with the nuclear refurbishment program. I think from our perspective, that uncertainty is one that needs resolution and is one that is being addressed in the LTEP review.

Mr. Bob Delaney: So the reserve generating capacity should really be called the prudent reserve generating capacity.

Mr. Bruce Campbell: As power system operators, we always consider ourselves to try to be prudent, yes.

Mr. Bob Delaney: Okay. Thank you.

I believe Ms. Albanese has a few questions to finish this off.

Mrs. Laura Albanese: I only have a couple of questions.

I wanted to go back to your report and the consultation sessions. A common theme during your consultation sessions was the need for better education amongst Ontarians about the province's electricity needs and a better understanding of the planning and siting process. What steps can we take in order to better educate the public and to get them involved and to participate more effectively in the process, in your opinion?

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Mr. Bruce Campbell: Well, what we've recommended here, just as part of addressing that, is not only to get information out there—and you don't just throw out information; you've got to give it to people in ways that they can understand. I often say, when I get a little bit lost in the technicalities, that I don't need the 17-decimal-place answer; the two-decimal-place answer ought to be just fine, thank you very much. It's not just a matter of taking data and throwing it out the door; it's a matter of understandable information that people can take and engage in discussions around these very issues.

There are choices to be made, and I think it's important that the information that bears on those choices be widely available. We try to do our bit on our website. We put a lot of information on there, most of it understandable—some of it would require some specialist knowledge and so on, but we really try to kind of communicate out. That's the kind of thing that we're talking about.

The other thing we're talking about is don't just do it once. This is why the advisory committee recommendation has attached to it, to keep that going, that it should kind of check in with the municipal council at regular periods so that you don't have these situations where things are just ticking along, and all of a sudden you're presented with a need for a facility that you had no idea was coming. So it's regular information; it's understandable information to the right people at the right time and on an ongoing basis—just the way my residents' association on my street, people who are interested in the municipal planning, regularly keep the rest of us up to date. It should be just part of that kind of process, where, okay, here's what's happening with the electricity supply for the municipality. That's why it's good to have that connection, because the municipal planning world does that very well, is what we were told.

Mrs. Laura Albanese: And the report—

The Chair (Mr. Shafiq Qadri): One minute.

Mrs. Laura Albanese: Okay. I guess at this point, I will just ask you if there's anything that you would like to add that we haven't asked.

Mr. Bruce Campbell: No. That's fine.

Mrs. Laura Albanese: Okay. Thank you very much.

The Chair (Mr. Shafiq Qadri): That's likely the broadest question of the day, but thank you, Ms. Albanese.

Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. I probably won't ask you any questions until we get the email. I think it's probably more important. We haven't really seen a lot from you guys, the IESO, on this file, and I

doubt we're going to, to be perfectly frank. I see you more as the electricity operator as opposed to somebody who would have been involved in the gas plant scandal, whether it was in the cancellation—the decision to cancel—or in the cover-up. I don't see you as part of that; I just want you to know that. I see you more as an operator.

You talked about your website. I go on your website first thing every morning and several times throughout the day. I'm always curious to see—I find it very valuable information. I like knowing what's producing what. I always get intrigued when I look at wind, like it was a couple of weeks ago, at 10 in the morning, producing two megawatts out of the 1,864 that we pay for. An hour later, it increased by 50%; it was at three megawatts. So I do have some interest in watching that, but I do appreciate the work that you put on your website every day, because it's our go-to source.

My motion that I'll read now will come up later formally, but I want you to hear it in case you're not here when we get around to motions. It says, "I move that the Standing Committee on Justice Policy request from the Independent Electricity System Operator (IESO) all electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent or received by employees of the IESO between January 1, 2010, and August 13, 2013; that the documents be provided to the committee within three calendar weeks; and that the documents be provided in an electronic, searchable PDF."

Do you understand what I'm asking for here?

Mr. Bruce Campbell: I understand what you're asking for.

Mr. Victor Fedeli: Is three weeks tight?

Mr. Bruce Campbell: Could I say that if we're finding it tight, we'll let you know?

Mr. Victor Fedeli: I think that's going to be fair. We'll discuss that.

Mr. Bruce Campbell: I think we'll do our best, but retrieving these records—yes, they're available, but getting to them sometimes is not as simple as you might think.

Mr. Victor Fedeli: Okay.

Mr. Bruce Campbell: So if I could simply ask that if we're having trouble meeting that deadline, what we'll do is let the committee know and give you some sense of when we think we'll be able to do it.

Mr. Victor Fedeli: Yes, generally we ask for two weeks. In your case, because this is rather extensive, and the first request you've had, we put it at three weeks. But I don't see any difficulty in recommending to the committee that we be flexible with it.

To be quite frank, again, I don't really expect there's going to be a lot there from you. I don't know that we're going to learn how the gas plant got cancelled because of the IESO, or who ordered the cover-up because of the IESO. I don't think we're going to find even one email, to be perfectly frank, but the fact that this did come to us—it's prudent that we follow up. We probably wouldn't

be doing this had the Liberals not called you here today; it would have been something that we would have—I just don't see that you're going to be a part of it, but now that you're here, we'd better be thorough as a committee as we're supposed to be and find whether there's anything that we need to be concerned with.

So I appreciate your time here today.

Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

To the NDP, Mr. Tabuns.

Mr. Peter Tabuns: Thank you very much, Chair.

Mr. Campbell, you talked about the Oakville generating station providing local support for local demand and capacity for the province as a whole.

Mr. Bruce Campbell: That's correct.

Mr. Peter Tabuns: Do you know how that's split out?

Mr. Bruce Campbell: I think the simple answer is, no, I can't give you a number at this time.

Mr. Peter Tabuns: Could I ask you to provide us with an undertaking that you would let us know within the next three weeks what the split was in the allocation of power?

Mr. Bruce Campbell: Yes, we'll address that question. I'm not sure it's going to be quite that simple, but whatever answer we give you, we'll explain it.

Mr. Peter Tabuns: Okay, and if you could do the same for the Mississauga plant as well, I would appreciate it.

Mr. Bruce Campbell: Sure.

Mr. Peter Tabuns: Unless my colleague has further questions—

Mr. Gilles Bisson: Yes.

Mr. Peter Tabuns: Apparently, he does.

Mr. Gilles Bisson: Well, just because I went to your website to take a look at what actually your output is today, and it's actually, just for the record, 17.8 kW.

Mr. Bruce Campbell: Yes.

Mr. Gilles Bisson: It's not 25, so we have—

Mr. John Yakabuski: No, the peak for the summer was 25 kW.

Mr. Gilles Bisson: No, but I'm just saying, if you take a look at the averages over the month, about 17 kW to 18 kW is what we've been running—not the way I would build an electrical system.

I would just end it there to say that it seems to me that this whole approach that the government has taken in dealing with the electricity needs of Ontario has probably been one of the more expensive ones. I think we agree that we have to do everything we can to make a much greener system, and I think that is a laudable goal and that's something that we support as New Democrats and always have in will, but this entire approach, it seems to me, has added to this whole debacle; we're into this mess because of it—this is just a statement; you can respond if you want—and, in the end, it's costing the ratepayers and, in the case of the gas plants, the taxpayers, a heck of a lot more money than we should be paying.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further questions from the NDP?

Mr. Peter Tabuns: No.

The Chair (Mr. Shafiq Qaadri): Thank you.

Mr. Campbell, I thank you for your presence.

We have several issues before the committee. I think the floor is with Mr. Fedeli or Mr. Bisson, as you like.

Interjection.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, your motion?

Mr. Victor Fedeli: They're being handed out now, Chair.

This is the one that I just previously read; I'll read it into the record. This is a motion for the Standing Committee on Justice Policy.

I move that the Standing Committee on Justice Policy request from the Independent Electricity System Operator (IESO) all electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent or received by employees of the IESO between January 1, 2010, and August 13, 2013; that the documents be provided to the committee within three calendar weeks; and that the documents be provided in an electronic, searchable PDF.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The motion is in order as received. Other comments before we vote on it?

Mr. Victor Fedeli: I don't have any difficulty if—we have extended the same courtesy to virtually everybody who we've requested documents from, Chair.

The Chair (Mr. Shafiq Qaadri): Understood.

Mr. Victor Fedeli: If they write back and say, "We're not ready yet," we can understand that.

The Chair (Mr. Shafiq Qaadri): All those in favour of the motion? Those opposed? The motion carries.

All right. We're going to, Mr. Fedeli, before entertaining your second motion, take a short recess of five minutes.

The committee recessed from 1500 to 1507.

The Chair (Mr. Shafiq Qaadri): Colleagues, the committee is back in session. Mr. Fedeli, just to remind you, this has not officially been moved yet, so you have the option of either not moving it now or—

Mr. Victor Fedeli: I am not moving a motion.

The Chair (Mr. Shafiq Qaadri): Fine. Mr. Bisson?

Mr. Gilles Bisson: I have a motion, if the Clerk wants to get a copy. Do you want me to read it into the record as she—

Interjection.

Mr. Gilles Bisson: Sorry about that. Do you want me to put it on the record before? It's pretty straightforward.

The Chair (Mr. Shafiq Qaadri): No, I think that it should be distributed.

Mr. Gilles Bisson: Okay. Tell me when you're ready.

The Chair (Mr. Shafiq Qaadri): So that all members can verify your reading.

Mr. Gilles Bisson: That could be a problem. I can do it in franglais.

Le Président (M. Shafiq Qaadri): Votre choix, mon ami.

M. Gilles Bisson: Non, en franglais. You know what franglais is?

The Chair (Mr. Shafiq Qaadri): Oh, I see. Franglais, oui.

Mr. Gilles Bisson: It's a mixture of both.

Le Président (M. Shafiq Qaadri): Oui, je sais. Malheureusement, franglais—ce n'est pas une de nos langues officielles.

M. Gilles Bisson: Je le sais, monsieur le « président ».

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, the floor is yours.

Mr. Gilles Bisson: Thank you very much, Chair. I move that the Standing Committee on Justice Policy direct the Office of the Premier and the Office of the Government House Leader to produce any and all identifiable papers and electronic files and records related to the Oakville and Mississauga gas plants addressed to and received from Don Guy, including but not limited to correspondence, briefing notes, emails, PIN messages, BBM messages, SMS messages, memoranda, issue or House book notes, opinions and submissions, and including any drafts or attachments to those records.

And I'd ask just as an addition that it be done in a searchable PDF. I should have put that at the end.

The Chair (Mr. Shafiq Qaadri): Just for the record, I note that it was written "all identified paper." You said "identifiable," and I'd just like you to clarify which one you want.

Mr. Gilles Bisson: Which line was that?

Mr. John Yakabuski: Second line.

Mr. Peter Tabuns: Second line.

Mr. Gilles Bisson: "Government will produce any identified." That was my franglais sticking out again.

Le Président (M. Shafiq Qaadri): Oui.

M. Gilles Bisson: Mais oui, monsieur le Président. Vous savez.

Le Président (M. Shafiq Qaadri): Je vous excuse. All right. It's in order. Comments—

Mr. Gilles Bisson: And the addition is that it be in a searchable PDF.

The Chair (Mr. Shafiq Qaadri): In a searchable PDF. Thank you.

Mr. Delaney.

Mr. Bob Delaney: I would ask, Chair: How is this different from previous requests of the Office of the Premier and the office of the government House leader? It would appear that this is a duplicate of a request already made.

Mr. Gilles Bisson: My understanding—I checked with the Clerk earlier—is, the request was not made on Don Guy. The only stuff we have on Don Guy is what was already gotten from Laura Miller and other people who were in the Premier's office.

Mr. Bob Delaney: I understand that, but having made the request to the Office of the Premier and the office of the government House leader, the previous request cap-

tures all of the things that have been described in your motion. Why would you want to have it done again?

Mr. Gilles Bisson: My understanding is, we don't have all of the information that was requested. That's why we're making the request.

I'd be interested to hear from the Clerk.

The Chair (Mr. Shafiq Qaadri): Procedurally, if there is duplication, we would receive notification of that.

Mr. Gilles Bisson: Yes. That's right.

Interjection.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: I don't believe any previous motion, unless I'm incorrect, included PINs and BBMs, did it?

Mr. Bob Delaney: I'm sorry; one more time?

Mr. John Yakabuski: I don't think the previous requests extended to PINs and BBMs.

Mr. Bob Delaney: I believe your language did encompass that, not that you could—I don't know enough about whether or not those things exist anyway, but I believe your previous motion, and I can't recall who made the motion, to the Office of the Premier and the office of the government House leader encompassed all of these search terms and would have captured all of the information that's been requested here again.

Mr. John Yakabuski: It won't take long to get an answer, then, will it?

Mr. Gilles Bisson: Just to be clear, as the author of the motion, it's because there are a number of email accounts that Mr. Guy was using. What I asked the Clerk earlier was, had we requested that information from the Premier's office or others? My understanding was, the only ones that we got were the ones that were covered by previous searches, not Mr. Guy in regard to his live account and the other account that I had raised with the Clerk this morning. I'm asking for anything that's associated with any emails ever sent to Mr. Milloy's office and his staff and the Premier's office and his staff, and that was not requested before.

I'm sure if there's any duplication, they will figure out how to work it out.

The Chair (Mr. Shafiq Qaadri): Thank you. The motion is in order. Those in favour of this motion? Those opposed? The motion carries.

We have a couple of other issues. One is, we are in receipt of a number of confidential documents. They currently reside on a CD-ROM. They are from the Ministry of Government Services. It was deferred to today. My suggestion and advice to the committee is that we defer this to a subcommittee meeting after next week's meeting to deal with it formally. Suitable? Gentlemen? Ladies? Fine.

The final issue of the day is the technical briefing with reference to the rulings earlier, for which Mr. Sibenik has the floor.

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Yes?

Mr. Gilles Bisson: Could I—oh, sorry. Go ahead, Mr. Delaney. I didn't see you.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: Just before we do this, my understanding of this briefing, considering that its implications extend to many people, is that this briefing is open to everybody. Is that correct?

The Chair (Mr. Shafiq Qaadri): It's the will of the committee, yes.

Mr. Bob Delaney: That's fine. I just wanted to check.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Yes, we'll just go in camera, and anybody who wants to stay can stay.

Mr. Bob Delaney: Wait a minute. That's not what I said.

Mr. Gilles Bisson: Well, that's what I'm asking for.

The Chair (Mr. Shafiq Qaadri): Fair enough. Mr. Sibenik, you have the floor.

Mr. Peter Sibenik: Yes. Earlier this morning, there were some concerns about the issue of the Speaker's emails, the emails—

Mr. Gilles Bisson: Excuse me. I'm asking that we go in camera.

The Chair (Mr. Shafiq Qaadri): Sorry, I need the will of the committee for that.

Mr. Gilles Bisson: I move that we go in camera.

The Chair (Mr. Shafiq Qaadri): If we're going in camera, then I need the will of the committee. Is it the will of the committee that we go into camera?

Interjection.

Mr. Gilles Bisson: Because this is internal stuff. If people want to stay, they're more than welcome, but at this point—

Interjections.

The Chair (Mr. Shafiq Qaadri): Just to inform members, in camera means we are sans table officers, translation and Hansard, and usually, there has to be something fairly controversial or confidential to go into camera.

Mr. Bob Delaney: Chair, we're not discussing state secrets here; we're discussing the interpretation of the committee's mandate—

The Chair (Mr. Shafiq Qaadri): Understood.

Mr. Bob Delaney: —and I think it's important that this be on Hansard so that anyone who's affected by a request from the committee can look up Hansard and find out just what that request means.

I'm a little mystified. Why would we want this to be done in secret, when a lot of people are going to be saying, "Well, what did you decide when you were in camera? Because I've got to respond to a request from this committee." This doesn't make any sense.

The Chair (Mr. Shafiq Qaadri): I would just once again advise committee members that going into in camera is used, usually, for somewhat extraordinary circumstances, one. Two, as Mr. Delaney has mentioned, the point of the technical briefing is to highlight that the decisions emanating from the Chair are based on parliamentary procedure, legal rulings, and the founda-

tion thereof. But it is entirely the will of the committee whether we go into camera or not.

Mr. Gilles Bisson: The reason for the request, first of all, is—let's clarify: There are no decisions being made. This is a technical briefing, (a), and (b) what I wanted is because I need some of my staff here if we're going to have this discussion, and I wanted to do it in camera, in fairness to the Chair. So I would ask that we go into camera.

Mr. Bob Delaney: Well, I still don't get it. If what we're going to be doing is discussing something that has a material bearing on how people respond to a request from this committee, why are we trying to cover up the record of that decision?

The Chair (Mr. Shafiq Qaadri): I would just—be advised, Mr. Bisson, that staff are not allowed in the in camera session, for which reason it's in camera.

Interjections.

Mr. Peter Tabuns: Give him a second, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Fair enough.

Mr. Gilles Bisson: I move a motion that we go in camera and that we allow our staff to be here for that discussion.

Interjections.

Mrs. Laura Albanese: "In camera" usually means that staff is not present.

Mr. Gilles Bisson: We've had staff for the briefings before. This is a technical briefing.

Mrs. Laura Albanese: In the six years I've been here, when we're in camera, staff have never been in camera.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, you're putting the Chair at somewhat of a disadvantage. I mean, do we want one staff per party? "In camera" means MPPs only, even to the point where the table officers remove themselves.

Mr. Gilles Bisson: We've had in camera meetings before—

Interjections.

The Chair (Mr. Shafiq Qaadri): Fine, the Clerk, yes, but I mean Hansard and, as I understand it, our translators, broadcast, TV. Are you here, Jeff? Jeff is here.

Mr. Gilles Bisson: This is really boring stuff. It's a technical briefing—

The Chair (Mr. Shafiq Qaadri): I appreciate your desire to save us from the boredom—

Mr. Gilles Bisson: Let me finish. We've had technical briefings before with staff in the room.

The Chair (Mr. Shafiq Qaadri): Fair enough.

Mr. Gilles Bisson: It's not the first time we've done that.

Mr. Bob Delaney: Well, if it's really boring stuff, then there's nothing to hide.

The Chair (Mr. Shafiq Qaadri): All right. I think I would require the will of the committee at this moment. Those members of the committee who would like to have it in open session as we're proceeding—

Mr. Bob Delaney: Chair, a five-minute recess?

The Chair (Mr. Shafiq Qaadri): Fine. A five-minute recess. Keep it to five minutes, please.

The committee recessed from 1518 to 1523.

The Chair (Mr. Shafiq Qaadri): Colleagues, the meeting is back into session. Mr. Bisson?

Mr. Gilles Bisson: Chair, just for the record, I'll withdraw it.

The Chair (Mr. Shafiq Qaadri): Sorry, what are you withdrawing?

Mr. Gilles Bisson: The request to go in camera. I just wanted to, by way of explanation, say why. I wanted to have a frank conversation with the Clerk and yourself in regard to some of the reasons that we feel we're not being enabled to ask these questions. I'd rather we had not done that in open session; that's why I was asking. But if the government wants it in open session, fine, let's do it.

The Chair (Mr. Shafiq Qaadri): Thank you. So we'll now proceed with the technical briefing from Mr. Sibenik. Mr. Delaney?

Mr. Bob Delaney: Appreciating the request made by Mr. Bisson, the forum for doing the thing that he has asked might be a meeting of the subcommittee, for which we would be pleased to accommodate him. But for this particular technical briefing, for the benefit of witnesses who may have yet to appear and individuals who, as we've heard numerous times, are wondering how to interpret document or information requests, I think it's important that they hear what's going on here, and, not only that, but that it be recorded on Hansard.

Mr. Gilles Bisson: When can you take yes for an answer?

Mr. Bob Delaney: Okay. I'm taking yes for an answer.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Mr. Sibenik, please, the floor is yours.

Mr. Peter Sibenik: Yes, thank you very much, Chair. This is going to be very brief because—

Mr. Gilles Bisson: I want it to be long.

Mr. Peter Sibenik: Oh, well, there can be a Q&A that can be very long, Mr. Bisson, at the end of the brief statement, but the Chair has already made a ruling on that and I think that the committee should be cognizant of that. I think that the line of questions that is referencing the emails dealing with the Speaker doesn't really address any of the two orders of the House that have been made.

The first order dealt with non-production before the estimates committee, and that happened before the occurrence of the emails in question. So how these emails could bear on the non-production before the estimates committee is questionable.

With respect to the second order dealing with the cancellation and relocation of the plants, again, I can't see the relevance to the issue. The decisions to cancel and relocate were made beforehand. So, again, the emails occurred afterward, so I'm not sure where the bearing is there.

As I indicated this morning, there are other mechanisms by which members wishing to pursue that line of—

Mr. Gilles Bisson: I didn't hear you. Sorry.

Mr. Peter Sibenik: There are other mechanisms by which the House, or members of the House, can pursue a particular line of inquiry. I indicated two or three of them. One of them—

Mr. John Yakabuski: Could you indicate those?

Mr. Peter Sibenik: I'm sorry?

Mr. John Yakabuski: Could you indicate those?

Mr. Peter Sibenik: Standing order 21, dealing with notice of a point of privilege that's filed with the Speaker: That is one of them. An oral question, for example; a member's motion. There could be meetings of the House leaders, for all I know, that eventually result in a motion that is moved, resulting in an order of the House.

It's not as if that has not happened already. There's already been an enlargement of the original order of the House. There was Mr. Leone's original motion that resulted in an order of the House. The House apparently was not satisfied with the ambit of that and so, on a UC motion, that got enlarged about a week or so later into a second order of the House, probably with the intercession of the House leaders. So if the House leaders want to get together again and enlarge it again, so be it. They can do that, and this committee can, in effect, have it enlarged that way. So there are a number of opportunities there for that particular line of inquiry to be gotten into, to be addressed further.

I will say that over the course of the better part of the past 25 years, I've been the research officer for various committees, including the Standing Committee on the Legislative Assembly. Whenever there's been a *prima facie* matter of privilege that has been referred to that committee or any other committee, the issue of the communications that have been made to and from the Speaker have not really been the subject of the inquiry into the matter of privilege. That would be a separate matter, and, in my view, it would be a separate matter in this particular occasion as well.

I think the reason why the committee has been struggling over the issue over the course of the past little while is that there have been documents that have been produced in respect to committee motions—a committee request for documents. But just because the documents are being presented to the committee, are being tabled largely by the civil service, does not mean that everything and anything that is in those documents can be the subject of a line of questioning. It would be tantamount to the procedural tail wagging the dog.

Decisions as to the orderliness of a line of questioning dealing with a particular document that is before the committee are for the Chair of the committee to decide, and that decision has already been made.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sibenik. Before I offer the floor to a number of speakers who have indicated their willingness to speak, I would just simply once again emphasize that as Chair, I see it as my mandate of course not only to enforce parliamentary procedure, but to also have the informed advice of the entire table officers and parliamentary procedure. So any decisions that are emanating from this Chair with refer-

ence to questions—what is in order, out of order—are emanating from that focus and no other.

Mr. Leone, then Mr. Yakabuski, and the floor is open after that—and Mr. Fedeli.

Mr. Rob Leone: I'll defer to Mr. Yakabuski.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair—

The Chair (Mr. Shafiq Qaadri): Sorry—Mr. Bisson. Let's alternate, but, in any case, Mr. Yakabuski, go ahead.

Mr. John Yakabuski: So I'm still up?

The Chair (Mr. Shafiq Qaadri): You're still up.

Mr. John Yakabuski: Thank you very much. You indicated that we had three other options, and you listed them. I just want to reiterate this: standing order 21, the Speaker's ruling; oral questions; or an order of the House. Were those the three?

Mr. Peter Sibenik: There's also a motion that could be done. There might be written questions. I've yet to canvass all of the various procedural opportunities. They would have to be in order, but they're out there.

Mr. John Yakabuski: Okay. So if I look at standing order 21, the Speaker's ruling, I find some real problems with that, where we'd be looking for a Speaker's ruling where the Speaker himself is a subject of the question, because it is about the influence that may or may not have been exerted. We're not suggesting the Speaker changed his view as a result of that influence, but the Speaker is an integral part of what went on, which admittedly went on in the email chain, but we're not allowed to ask questions. So I have a problem with 21.

1530

Mr. Peter Sibenik: Yes.

Mr. John Yakabuski: In the case of oral questions, we can only ask questions of a minister of the crown. We cannot ask questions of Don Guy or David Gene or Laura Miller or anybody else; we can only ask questions of the Premier or a minister of the crown. That completely limits us with respect to getting to the bottom of this issue through that avenue.

My question is, an order of the House to expand the terms of the committee: Does that require only a majority of the House to make a decision on that, or does it require unanimous consent of House leaders?

Mr. Peter Sibenik: Well, the last order that augmented the mandate of the committee was a UC motion that passed the House. So a majority would—

Mr. John Yakabuski: So if there was an order of the House brought forward to expand the scope and the terms of the committee to be allowed to ask questions relating to the emails and the implication that there was an attempt to influence the Speaker—if that was a decision of the majority of the Legislature, then we could change the terms of this committee?

Mr. Peter Sibenik: It could be augmented in one way, as long as the motion was in order.

Mr. John Yakabuski: Pardon me?

Mr. Peter Sibenik: As long the motion is in order, then there's no difficulty. That's a wording issue.

Mr. John Yakabuski: I'm sure we can find a way to make it in order. There has to be—when you say “in order,” you mean that it could never be allowed to be in order, something that involves the Speaker, or—

Mr. Peter Sibenik: It would depend on the motion. What I would suggest is, speak to one of the table officers on that when it comes time to do that.

Mr. John Yakabuski: Well, we may be breaking new ground here; I don't know. To me, it looks like the only opportunity for us to actually expand the terms of this committee is an order of the House, because I don't see the other two as being viable options.

It looks like our first opportunity, then, would be when the Legislature returns, after September 9.

Mr. Peter Sibenik: All I can say is that the current mandate of the committee does not permit the committee to look into the matter of the reference to the Speaker in the emails.

Mr. John Yakabuski: Okay. Thank you very much, and I will pass to Mr. Bisson.

The Chair (Mr. Shafiq Qaadri): We'll move to Monsieur Bisson and then back.

Mr. Gilles Bisson: Well, I'm not going to be long, but I just want to say a couple of things.

First of all, thanks to our Clerk and our—

The Chair (Mr. Shafiq Qaadri): Table officers.

Mr. Gilles Bisson: —table officers—table research, sorry. I well understand what my rights are as a member when it comes to appealing a decision of a Chair or raising a point of privilege or dealing with putting a question in the House. I get it, and I'm not going to argue that for a second. In fact, I gave the Chair notice this morning, when we started out, that New Democrats will be following up on that particular point in due time.

The point that I wanted to make, however—and I'm not going to say this any more than we did this morning—is, the Speaker made a decision that there was a prima facie case of contempt. Once that decision was made, a series of emails then were exchanged between the Premier's office and Don Guy.

In my mind, it wasn't a question that they were trying to change a decision on the prima facie case of contempt. That decision was made. So I'm not arguing for one second that the whole exchange had to do with, “Let's undo the decision.” The question was, “What the heck are we going to do with the documents?” This entire committee is about who said no to the release of the documents. That's what this committee is all about.

It seems to me that the thread is drawn between that and the possibility—the possibility, I am saying—that the conversation that ensued between the Premier's office and the Speaker's office had to do with the release of those documents, because the Speaker had said to us, when he ruled, I believe, on September 13, that in fact he had found a prima facie case of contempt and, number two, he was urging the House leaders to come to some sort of agreement about how these documents would be released.

As I read through the emails and as I ponder what it is that they may have wanted to talk to him about, there's a distinct possibility it was about how not to release the documents, which is a continuation of what this prima facie case of contempt is all about.

So I hear you. It's a bit of a grey line, you're saying, and you're saying that treads outside the mandate of the committee—I would argue not.

I will utilize what avenues we have at this point, because the Chair has ruled. I understand well, if I was to challenge you, Chair, this committee probably wouldn't meet until some time in September. So I will leave it be for now, and I will deal with this in due time, and we will follow up the ways that we have to appropriately get to the bottom.

What's paramount to this committee—why was the estimates committee refused the release of those documents, and who the heck did that? It seems to me, after the government got caught and the Speaker had ruled there was a prima facie case of contempt for not releasing the documents, the Premier's office, I allege, was still trying to find a way not to release the documents. Those were the questions I wanted to ask Mr. Guy this morning—not on the actual decision of the prima facie case of contempt.

Anyway, at a future date, as they say, stay tuned; same channel, different time.

The Chair (Mr. Shafiq Qaadri): Merci. Yes, Mr. Delaney?

Mr. Bob Delaney: Thank you, Chair. The question that I have to Mr. Sibenik and to the Clerk has to do with direction to those who have to respond to motions that, to be very frank, would help us avoid these exact issues. In other words, how can we assist people who have to respond to those motions in providing all of the things that are within scope, but only the things that are within scope?

In looking at some of the things that have been released to the committee, it seems to me that over in the different ministries, they're thinking, “If in doubt, get it out.” What we're trying to do here is to say that we don't really want to be buried under an avalanche of trivia that may be marginal, but what can we do to assist some of the people who have to make those operational decisions, in providing this committee those things that it needs, but only those things that it needs?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. What you had said was that the prime reason was because the Levac emails in question occurred afterwards. Is that correct? Do I understand that—

Mr. Peter Sibenik: They're not relevant to the mandate of the committee. The mandate of the committee is to deal with why there was non-production before the estimates committee, which happened well before.

Mr. Victor Fedeli: And you said they don't deal with it because they occurred—“emails occurred afterwards.”

Mr. Peter Sibenik: They occurred afterwards; that's correct. My essential point here is that the emails do not

deal with the mandate of the committee; same thing with the second order.

Mr. Victor Fedeli: Again, as I've said to every witness, we go after two things. How much did the cancellation of the plants cost? The fact that we still don't know how much one of them cost pretty much tells us where we are. The other side of it was, we've detected, sensed and, I believe, proven that there has been a cover-up of that information exchange. We've gone to great lengths to do that. That's part of where we are today. There's a massive cover-up here, and a lot of that Liberal cover-up did indeed occur afterwards.

Number one, when we got the first batch of documents, there were documents that were redacted. There were documents that were missing. We know that for a fact. That's part of the cover-up. They didn't give us—and that occurred afterwards—the cover-up also included deleted emails. We came to learn that over the last year. That's all part of it.

Another example is, as was learned from a brown paper envelope in the beginning and then under sworn testimony by members of the Ontario Power Authority, including their vice-president, the Ministry of Energy told the Ontario Power Authority not to turn over all the documents. That's a big part of the cover-up. That occurred after the ruling. Only then did we see a parade of Liberal caucus members, including several cabinet ministers, come out and point their fingers at us and say, "You have all the documents." That's part of the cover-up as well. We didn't have all the documents, and the government knew that. They had instructed the OPA not to give us all the documents. That occurred after.

Eventually, we finally got the Auditor General's report for Mississauga, and now we have the truth for half of that portion of the story. Again, we still don't know how much the cancellation of Oakville cost. That would have been in documents somewhere; we still don't have the documents. We do not have all the documents, or we'd know how much it cost to cancel Oakville. We're trying desperately to get to the truth.

1540

We do know there's a cover-up here, and we do know that part of the cover-up included those operatives trying to get to the Speaker and change his opinion. Now, maybe the Speaker put up his hand in one half a nano-second and said, "Hang on. We're not talking about that," and off they went. That's not the point. The Speaker is not the issue here. He's their target. He's the victim in this, in my opinion. It's the operatives who felt the entitlement that they can go and broach the Speaker. It's that sense of entitlement that they had. They are part of a cover-up. They are an integral part of the cover-up. When that failed, they went to plan B. When that failed, they've gone to plans C, D, E, F and G. They're all over the place.

We're trying to peel this onion back, and I think you're stopping us from peeling that one layer. Maybe there's something there; maybe there's nothing there. That's not the point. We have the opportunity and the

right to follow every email we got and every lead we got as part of the cover-up.

I believe it's systemic within the Liberal Party. That's their first default: "How can we stop them from getting the documents? We're going to have to give them; let's only give them the ones that don't say anything." When we caught them at that, "Well, let's give them more, but not these ones. Let's start redacting and whitening out and removing pages." When that failed, "Get our cabinet up there pointing accusatory fingers at them." It's just systemic. It's bred into them to do that. That was their initial reaction, not just to come out and say, "Here they are. Here's how much it cost," and I believe that what you're doing today is stopping that one piece from happening. I genuinely believe that.

The Chair (Mr. Shafiq Qadri): So it's Mr. Delaney, then Mr. Leone.

Mr. Bob Delaney: I'm not sure whether Fedeli has impugned the integrity of the Chair, the Clerk, or both, not to mention the members who sit on this side, but that's not my question.

Earlier, I asked the research clerk a question. I appreciate that the question that I asked you will take a little bit of preparation. Am I to expect a response, and roughly when and in what form?

Mr. Peter Sibenik: I can look into the question, Mr. Delaney, and respond further at the next committee meeting.

Mr. Bob Delaney: That's fine. That's the answer that I wanted.

I would like on the record some guidelines for some of the men and women who, in good faith, are doing their utmost to comply with the requests for information stemming from this committee to do what the committee's mandate does require us to do, which is to assess whether or not there is a case for contempt against the former Minister of Energy, to find out what the costs were of the two cancelled power plants, and to come up with recommendations for future siting and other such parameters as are described in the committee's real mandate.

Mr. Peter Sibenik: Any information that I would be providing, Mr. Delaney, would be procedural in nature.

Mr. Bob Delaney: That is fine. That's exactly what I'm asking for.

Mr. Peter Sibenik: It's really for the committee to make the decision, when these motions are being moved and when they are being debated and decided, how they can better frame the motions so that the committee gets the information that it would like.

Mr. Bob Delaney: Whether in writing or orally to be captured by Hansard, I just wanted to make sure that you will indeed respond to the question I raised.

Mr. Peter Sibenik: Right.

Mr. Bob Delaney: Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. Mr. Leone?

Mr. Rob Leone: Mr. Chair, I appreciate the line of argument that's being presented as to why we can't talk

about what we want to talk about. As has been stated, one of the purposes of why we're here is about the release of the documents, and I agree. I think that is obviously what we're trying to talk about: why it didn't happen when it did and, further to that, why it didn't happen subsequent to that in any given period of time.

We know the extraordinary lengths this government actually went through and was prepared to go through in order to prevent the release of documents from going forward. They wanted to, obviously, restrict the search terms that were applied so that we wouldn't be able to receive all the documentation that we were asking for. They didn't release some documents on time. They obviously prorogued the Legislature. They attempted to change the ruling of the Speaker. Obviously, as we've learned as well, they were prepared to go to an election over this; they wanted a confidence motion to move forward.

I'm not concerned at this point in time with what has transpired in a meeting with certain individuals. I'm more concerned about the state of mind of the individuals; i.e., before they knocked on the door of the Speaker. What was going through their mind? What were they trying to do? We're being prevented from actually asking questions on that.

Certainly, I do agree that there is an issue about what transpired in the meeting, and that can be brought up at a different point in time, as has been stated. But at this point in time, at this juncture, we should be able and permitted to ask the questions of the people's state of mind who wanted to prevent or delay the release of documents through extraordinary measures, as we've seen. That is what's at stake here.

Again, for the purpose of this committee, what transpired in the meetings with the Speaker certainly has an element that is perhaps outside the scope of this committee, but the fact that they were willing to go that route to suppress the release of information is within the realm and within the scope of what we're doing in this committee. This is about the release of documents and the timely release of documents, which has subsequently been delayed. That, I think, is perfectly in line.

Secondly, I think it has to be mentioned that through prorogation, the whole process had stopped. We had to come back in February with another point of privilege and another motion to get this kick-started again. In my view, everything that transpired before the second point of privilege should be privy to what we discuss in this committee, because in essence, we're here today because of the second point of privilege and the second motion, when we came back in the second session of this 40th Parliament.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Leone. I'm going to bring closure now to this particular session. As I have been very ably reminded by the table officers, there is no actual debate on the ruling of the Chair. But I did want to present this technical briefing once again to essentially inform my colleagues that decisions from the Chair, as I mentioned earlier, are emanating from parliamentary procedural legal foundation and no other motivation. Of course, questions thereof are to be addressed elsewhere.

With that, committee is now officially adjourned until next week.

The committee adjourned at 1547.

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of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 20 August 2013

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(Hansard)**

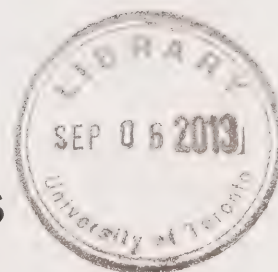
Mardi 20 août 2013

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 20 August 2013

Mardi 20 août 2013

The committee met at 0900 in room 151.

MEMBERS' PRIVILEGES

MR. WILLIAM BROMM

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy to order. We have our first witness. Please come forward, Mr. William Bromm, legal counsel and special adviser, office of the secretary of cabinet.

Welcome, Mr. Bromm. I invite you to be sworn in by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. William Bromm: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bromm. Your five minutes of opening address begin now.

Mr. William Bromm: Good morning. I am William Bromm. I am currently the legal counsel and special adviser to the secretary of the cabinet, a position that I've held since April 2011. Prior to that I was the executive assistant and legal counsel to the deputy Attorney General.

As Cabinet Office legal counsel, my main role is to provide support to the secretary of the cabinet on a wide range of issues, including government and cabinet operations, orders in council, and election and transition planning. I also assist the secretary in providing advice on these issues to the Premier's office and other ministries. I also provide advice to ministries and the Premier's office on the operation and authority of the Legislative Assembly.

I understand the operation of parliamentary privilege gives the committee the authority to request information from me that is otherwise protected by privilege or confidentiality. I just want to confirm for the committee that I've received authorization to discuss any matters of interest to the committee even if the information is privileged. The government does not, of course, waive that privilege as it relates to any matters outside of the committee.

So with that, I would be happy to answer your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bromm. Mr. Fedeli, the floor is yours.

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Mr. Bromm. Thank you for being here today.

Mr. Bromm, it's clear from the documents that—you know, we've been at this a little while now. It's clear from some of the documents that cabinet and Cabinet Office have been heavily involved in both the gas plant cancellation and all of the "happenings," if you will—I'll try to use a pleasant word—sort of the happenings since then. Can you walk us through your role in this whole gas plant debate?

Mr. William Bromm: I can try. It's hard because of the volume of records, and I'm sure the members who have gone through the records have seen my name and many other names on a large volume of records.

Mr. Victor Fedeli: Yes, about 3,500; you're in about 3,500 of them.

Mr. William Bromm: Exactly. So it's hard for me to—I wouldn't want to leave anything out, but I can speak primarily to my role in the secretary's office. I would provide advice on machinery of government issues.

For example, when I joined the office in April 2011, it was in anticipation of the general election coming up in the fall, and I was brought in to assist the secretary in preparing the traditional transition materials we always prepare for a general election. As part of that role, because I was in the office and the office is very small—there are only three people in the office—I would have had occasion to be copied on or receive documents related to the gas plant transactions. Early on it was, of course, the Oakville transaction, but I wasn't legal counsel on those files. I was simply in the secretary's office.

On occasion, I would be asked to provide some advice on issues coming to the secretary, but largely my role at that time would've been to see the email. We're all copied on everybody's emails because we're very small. I would go to the secretary and say, "Have you seen that email? Is there anything that you need?" She would say, "No, I'm good." I would step out of the picture and go back to the work I was there to do.

Mr. Victor Fedeli: Okay.

Mr. William Bromm: But if you have any particular questions about documents, obviously, I'd be happy to answer them.

Mr. Victor Fedeli: Yes, I've got maybe a dozen or so. Right off the bat—you have our documents there now?

Mr. William Bromm: Yes.

Mr. Victor Fedeli: So document 1—

Laughter.

Mr. Victor Fedeli: Exactly; you're chuckling.

It says you're "not going down alone." You're talking about the gas plant, the justice committee—

Mr. William Bromm: Yes.

Mr. Victor Fedeli: —and you say, "I'm not going down alone honey and I'm not above naming names."

So, will you name some names this morning?

Mr. William Bromm: Thanks for starting with some levity. This is just a joke between Halyna and I. Halyna was very stressed out about the idea of coming before the committee, as any of us would be. We're sort of choreographers behind the scene; we never like to be called up to the stage. This was just a moment of levity between Halyna and I saying, "I don't know why I'm on this list, but you are," knowing that she was nervous. That's really all that's about.

Mr. Victor Fedeli: If it was anybody other than you I'd probably say, "Mr. Bromm, this is no laughing matter," but we'll keep this in a pleasant tone this morning because I really think that we've got some pretty serious questions to ask you.

Mr. William Bromm: Absolutely.

Mr. Victor Fedeli: We'll get through to them. I do appreciate your comments to Halyna. I thought you'd enjoy starting that way as well.

Mr. William Bromm: At least you didn't bring up the one that has "gas" in it.

Mr. Victor Fedeli: Yes, exactly; we were selective.

You were definitely involved in the arbitration negotiations between the government and TransCanada. Am I correct in that?

Mr. William Bromm: Actually, no. I did have a very small role, and you might have seen some records related to that. So when a decision had been made that the government wanted to proceed and enter into negotiations and an arbitration agreement, there was discussion between the secretary of the cabinet, the Deputy Attorney General at the time, Murray Segal, and Chris Morley, as to who could actually sign the arbitration agreement. I'm not aware of the background to that, but the primary discussion was whether or not the minister or the deputy should sign the agreement, and there was some back and forth.

What I provided advice on was the operation of the Electricity Act to those particular circumstances. That act requires the minister to sign certain agreements, or somebody else like the deputy minister on direction of the minister. So I provided the advice that the deputy could not sign the agreement unless he was directed to do so by the minister. I was then asked to prepare that direction letter, and I did. But in terms of the actual arbitration agreement or the negotiations, I was not at all involved. In fact, to prepare that opinion in the direction letter I

didn't even need to know the contents of the arbitration agreement.

Mr. Victor Fedeli: Okay, that's fair. In document 2—this is from David Lindsay with energy. It's to yourself, at cabinet; it's to Chris Morley, in the Premier's office; David Livingston, at the time at Infrastructure Ontario; Shelly Jamieson, cabinet; Murray Segal, justice; Emily Marangoni, Premier's office; and Jennifer Wismer, energy. It's sort of multi-ministerial. The topic is the 8:30 a.m. call on Vapour.

Mr. William Bromm: Yes.

Mr. Victor Fedeli: So you were familiar with Project Vapour, then?

Mr. William Bromm: Yes.

Mr. Victor Fedeli: You understood what that was?

Mr. William Bromm: Yes.

Mr. Victor Fedeli: Okay. When did you learn of the so-called additional costs for Project Vapour; that is to say, the two sets of costs, one being for the ratepayer and one being for the taxpayer?

Mr. William Bromm: I don't have a particular recollection of when I would have learned, but it would have been around the same time that those issues were being discussed in the Legislature or at the committee, because the costing of the project was just not something I was ever involved in.

Mr. Victor Fedeli: So that document 2, then, was August 4, 2011.

Mr. William Bromm: Yes.

Mr. Victor Fedeli: Would that have been around the time, then, that you would have understood the two sets of costs existed?

Mr. William Bromm: Absolutely not. In fact, although I'm on the "to" line, one of the things I would point out is this is because of my reference before of us being a small office—

Mr. Victor Fedeli: Okay.

Mr. William Bromm: —and I was in the secretary's office at that time. I actually didn't attend many of the Vapour meetings at all because I was doing a different project for the secretary, so I wouldn't even have known the contents of those calls or whether they had even gotten to the point of discussing anything related to the costs that early in the project.

Mr. Victor Fedeli: Okay. Document 3, then, from Chris Morley—he's talking about the cabinet document that was signed: "I've now spoken with 4 who have been briefed and are willing to sign necessary docs on Vapour.

"Bentley, likely via long pen

"Duncan, via long pen

"Duguid

"Wynne, who is down at Queen's Park for an event..."

So, would you agree, then, if he's saying he has spoken with the four who have been briefed and who are willing to sign, that those four people understood what they were signing?

0910

Mr. William Bromm: I assume that they would understand what it is that Mr. Morley spoke to them about, but I wouldn't know the content of that particular conversation.

Mr. Victor Fedeli: It's next. It's page 2 of 3, and this is the "Private, Confidential and Commercially Sensitive." This is the arbitration discussion on reasonable awards, costs, award, overview, "reasonable damages to the loss of anticipated value" of Oakville. "The award may become a risk of the province." That is basically what the arbitration details and terms were. That's our document 3.

So when would cabinet have learned about this arbitration agreement?

Mr. William Bromm: Well, I'm not really sure because of the way this particular approval process would have worked, because it's only four ministers, and I believe the former secretary, Shelly Jamieson, and Peter Wallace, the current secretary, spoke of this.

This particular package was a walk-around. It was outside of the normal cabinet process, so four ministers signed as the quorum of cabinet, and then two weeks after this, which is the normal practice, the item would be reported into cabinet. Often, that item would just be reported as an information item. Between meetings of cabinet, a decision was made to proceed with arbitration with TransCanada Enterprises. That might have been the whole content of the conversation, but that's entirely speculation on my part because I don't attend cabinet.

Mr. Victor Fedeli: Okay. Document 4 brings you in just a bit deeper than maybe you suggested. I asked you about August 4, if you would have known by then. But this August 5 document—this is from David Lindsay—says, "Okay. I've just read the arbitration agreement here in Stratford"—that's the one I just referred to—"and had my office read the minister's letter of authorization drafted by William Bromm and the supporting cabinet minute. Based on this authorization I have signed the arbitration agreement." So he's signing this based on a letter that you crafted on August 5.

Mr. William Bromm: Yes, and that's the direction letter that I referred to that was simply direction from the minister to the deputy to execute the arbitration agreement with TransCanada Enterprises.

Mr. Victor Fedeli: So at that particular time, when you crafted the authorization letter on August 5—if you crafted that letter on August 5, would cabinet, or those four members, have understood, then, the fact that they were signing an arbitration with two sets of costs?

Mr. William Bromm: I'm sorry, and I certainly don't want to frustrate you, but I just wouldn't know what any of the members who signed the documents understood because I wasn't part of any of the discussions with them.

Mr. Victor Fedeli: So when I asked you when did you know there were two sets of costs—can you try to narrow down a bit more about a date? I know it's hard, and this was a while ago, but I'm just trying to get a handle—

Mr. William Bromm: For me, it wouldn't be a while ago. It would really have been when the issues were first coming up, either in the Legislature or at this committee, when you were particularly talking about the costs of the transactions and more information was coming out. Prior to that, I just wasn't involved in the negotiations of the deal or any aspects of what the costs would be.

Mr. Victor Fedeli: On document 4 again, this one that talks about the letter of authorization—I'm going to read you this letter: "This letter will confirm the basis upon which Her Majesty the Queen in Right of Ontario (the "crown") and the Ontario Power Authority (the "OPA") have agreed to divide between themselves responsibility for the payment of any award made under an arbitration agreement ... entered into between TransCanada ... the crown and the OPA...."

Does that tell us that there are two sets of costs: one for the OPA, which are the ratepayers, and one for the crown, which are the taxpayers? Is this not definitive back as early as August 5, 2011, that there were indeed two sets of costs?

Mr. William Bromm: One, I would point out that's not the letter that I wrote. The letter I wrote would have been from the minister to the deputy. So I don't really know a lot about the content of the letter. Is that letter actually in your package?

Mr. Victor Fedeli: Yes, the draft is document 3 and 4 of 5. The actual letter from Minister Brad Duguid to the deputy minister—this is the letter that the minister wrote to the deputy minister. He's saying that the liability is between the crown and the Ontario Power Authority. I'll ask you, then, as a lawyer, can you tell me if that signifies to you there were two people paying for this?

Mr. William Bromm: When I read that opening paragraph, in particular, it says to me—and this is again a quick reading—that there are a set of costs, and those costs will be divided between the OPA and the crown, formally—

Mr. Victor Fedeli: You may be the first person in that seat that has ever said that, by the way, and I thank you for that.

Mr. William Bromm: Well, I'm happy to shed some light on some—

Mr. Victor Fedeli: Well, you are, and I knew you would shed some light today.

Mr. William Bromm: I see it as one set of costs, and they're being divided between two parties. I don't necessarily see that as saying that there are two separate sets of costs.

Mr. Victor Fedeli: No, no, we'll call it one set of costs—the cancellation costs—but paid for by two groups.

Mr. William Bromm: Right, yes.

Mr. Victor Fedeli: The sad part, and why I bring this up, is that the government—even today, if you look at Minister Bentley's testimony and many others who have repeated this—"I want to draw your attention"—I'm paraphrasing—"You're going to hear a lot of numbers over the next year; I want you to remember one number:

The total cost of cancellation is \$40 million.” The total cost of cancellation is \$190 million. Actually, there are two numbers to remember and two discussions.

The government continued to claim that the Mississauga cancellation was \$190 million. They were right; that was the cost to the taxpayer, but what they failed to acknowledge or admit to is that there was a second cost paid and borne by the OPA, which is the ratepayer, which brought Mississauga to \$275 million. With this letter, signed on August 5, it’s very clear that there was one cost but borne by two parties, to paraphrase your own words again.

The Oakville transaction—the government continues to say there’s only one number you need to hear, and that’s \$40 million. That’s the total cost. It’s sort of, you know, cute by half, right? The total cost bracket to the taxpayer is \$40 million, but the total cost to the ratepayer, the one that they’re not talking about, may be \$300 million, \$400 million or \$500 million by the time we’re done. That’s what this letter absolutely and unequivocally proves this morning. That’s why I bring this up, Mr. Bromm.

You wrote a pretty good timeline. I have to admit that we use that constantly. On March 8, 2013, you wrote Oakville.doc and Mississauga.doc, and it is the timeline—

Mr. William Bromm: We all work in Her Majesty’s service.

Mr. Victor Fedeli: Well, you know, I’ve got to be honest with you, we genuinely appreciate this timeline because it’s pretty revealing, actually. We use it almost as our bible. We’ve expanded on a few things and maybe put a few salacious words here and there just to colour it a bit. We might use the word “scandal” once in a while—sorry, Chair, I was trying to be good today—but your basis is there. Very clearly, your March 8 timeline states that there would be two sets of costs—or one set of costs borne by two people: the ratepayer and the taxpayer. Can you, in your estimation, understand or shed some light to us on why the government has never revealed, until the Auditor General’s report on Mississauga, that there were indeed two sets of costs? You knew it. You’re pretty clear in here that there are two sets of costs. Can you give me any indication as to why they would not have told us?

Mr. William Bromm: I’m sorry. I can’t shed any light on the information the government would have given about cost because I wouldn’t have been involved in those issues at all.

Mr. Victor Fedeli: But they had this. You sent this to a Shannon Fuller at Cabinet Office. Who else, do you think or would you have understood, would have received this set of timelines?

Mr. William Bromm: I prepared that particular set of timelines—is it in here?

Mr. Victor Fedeli: Yes, it’s doc 5.

Mr. William Bromm: I suspect that it’s the set of timelines that we prepared in anticipation of the secretary’s appearance before the committee. So those documents would have gone to the secretary, for example, and

to other individuals who were getting ready for the committee’s proceedings. So it would have been shared with a small circle of people. This was not a document that I prepared for the government, for example; it was really internal to our office.

0920

Mr. Victor Fedeli: Okay, but it is very clear that there are two sets of documents.

The—I’ll call it the now infamous July 29, 2011, cabinet minute; this is document 6. We know, then, that Chris Bentley, Kathleen Wynne, Brad Duguid and Dwight Duncan were aware then, by signing this document and understanding the subsequent letter that came out of this document on August 5, seven days later, that there were two sets of costs. Why would you think that neither of—any of these four people would acknowledge that there are indeed two set sets of costs, other than, now, the letter that we have from Brad Duguid that says there are two sets?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: Why do you think they don’t acknowledge that?

Mr. William Bromm: It’s a question you would have to direct to the individuals you think—

Mr. Victor Fedeli: But I did. I asked Premier Wynne 30 times here, “When did you know there were two costs?” But she won’t answer that question.

Mr. William Bromm: I’m sorry. I can’t shed any light on that either.

Mr. Victor Fedeli: Do you suggest, then, that they’re misleading the Legislature or the province by not telling us that there are two sets of costs?

Mr. William Bromm: I would appreciate the position you might be coming from, but that’s not language that I would use or any information I would have.

Mr. Victor Fedeli: What language would you use, then, respectfully, to suggest that they know something and won’t admit it or won’t tell us?

Mr. William Bromm: That’s really not something I think I’m in a position to comment on at all.

Mr. Victor Fedeli: Okay, but I have asked the Premier 30 times here and maybe over 100 times in the Legislature, and we can’t get an answer of when. Why would you think she can’t answer that question?

Mr. William Bromm: Again, I couldn’t say.

Mr. Victor Fedeli: Thanks.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

To the NDP side, Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Bromm, thank you for being here this morning.

You may have touched on some of this, but just so I can set up my questions properly, what was your role in managing Project Vapour for Cabinet Office?

Mr. William Bromm: I actually had very little role; in fact, I would say I had no role at all in actually managing Project Vapour. As I mentioned, I was brought in to the office in April 2011 to prepare the transition materials for the election. Those materials are voluminous and that

was primarily my full-time job. But on occasion, because of the nature of our office—it's very small—and also because, at the time, the executive assistant to the secretary was moving to another position, I was sort of doing both my job and filling in for the executive assistant. My main role, as I mentioned, would have been to say, "Do you have what you need for today's meeting? Did you see the email from the deputy?" or "Did you see the email from Chris?" But it wasn't a substantive role at all—more air traffic control than anything.

Mr. Peter Tabuns: So you had other primary responsibilities. From time to time, you would prepare documents related to Vapour.

Mr. William Bromm: Yes.

Mr. Peter Tabuns: Can you remember when you first did work on that file?

Mr. William Bromm: I think the first time I did anything substantive would have been around the time of the direction letter that I talked about, in seeing the exchange between the deputy, the former secretary and Chris Morley about who could sign the agreement. And then, because I had information about that, I was able to weigh in, clarify how that had to be worked out, and write that letter.

Mr. Peter Tabuns: Given that you were there in 2011 in the pre-election period and you're still here today, were you involved in any way with Vapour-lock?

Mr. William Bromm: Absolutely not, actually. I mean, I was certainly aware that Vapour-lock existed as a project within the office, but it was not something that I was involved in at all.

Mr. Peter Tabuns: Okay. How many documents, or cabinet minutes, did you draft related to the cancellation of the gas plant?

Mr. William Bromm: None. As legal counsel in the secretary's office, I would rarely draft a cabinet minute, and would actually rarely be involved in something going to cabinet unless there was an issue around how it was working, because we have a whole machinery in Cabinet Office, the executive council office, that works with the line ministry that's bringing forward the item to draft the minutes. The only time I might be involved is if there's a question around, for example, a minister is not in the area to sign: Who are the minister's delegates? Can someone sign by fax because they're not available? So I would answer machinery-of-government legal questions to ensure that cabinet is truly authorizing something, but I wouldn't be involved in drafting the actual minute.

Mr. Peter Tabuns: Okay. Who asked you to draft that minister's letter of authorization again?

Mr. William Bromm: I can't actually remember who asked but I'm assuming that since I waded into the water, it was either the deputy, the secretary or Chris Morley who said, "Well, can you draft us a letter?" At the time, my recollection is, they were working under quite a fast timeline to try to execute that arbitration agreement and this was like a little bump in the road, and rather than going back to the ministry and saying, "William Bromm says you need a direction letter," and then the ministry

calling and saying, "Can you clarify what you meant by 'needing'?" it's just easier for someone to say, "Just draft the letter. You seem to know what you're talking about," and so I drafted the letter.

Mr. Peter Tabuns: You and Halyna Perun were in communication about all of these matters.

Mr. William Bromm: Not during the actual—a lot of the negotiation, but Halyna and I were in a lot of communication during the tail end of the estimates committee proceedings, yes.

Mr. Peter Tabuns: Sorry; during the tail end of the estimates committee proceedings?

Mr. William Bromm: Yes, when the estimates committee had passed its motion asking for documents and the ministry was working through that process, Halyna and I were in contact. Prior to that, we had some contact, but it was mostly for me to gather information for the secretary at various stages of the project, but I wouldn't say we were in frequent contact on the file.

Mr. Peter Tabuns: And what sort of information were you gathering for the secretary from her?

Mr. William Bromm: My recollection—again, it was some time ago and a large volume of records. If I pull one up in my mind, it would be "Can you just give me a status of the discussions?" or something like that, and Halyna would send an email, and I would make sure that it went to the secretary.

Mr. Peter Tabuns: And can you tell us about the role of the two of you, which became more intense once the estimates committee had put forward its motion and was looking for documents?

Mr. William Bromm: Yes. Well, it wasn't early days, but it was still early days in the issuance of motions from committees for the production of documents. Not everyone is familiar with the operation of the assembly and how committees work, and so at a certain point in time, people would have reached out for information about how this process works, and then I would become more involved at that point, not just with energy but other ministries that are involved as well.

Mr. Peter Tabuns: So did you advise on the preparation of, assembly of and production of documents?

Mr. William Bromm: It depends on what you mean by "advise on." I was not involved in determining how their search should work or what their search terms would be or anything like that. I would have been at the 10,000-foot level in terms of saying, "This is how a committee motion works and this is how you respond to a committee motion," your options for presenting information to the committee, those sorts of things, but not the actual details of a search.

Mr. Peter Tabuns: Tiffany Turnbull indicated that you reviewed her statement before she came before this committee.

Mr. William Bromm: Yes.

Mr. Peter Tabuns: Why was that your role?

Mr. William Bromm: Well, Tiffany was a former member of Cabinet Office, and one of the roles I have assumed with committee proceedings is assisting govern-

ment witnesses appearing before the committee. So as a former member of the government—when Tiffany was called, she asked for some assistance, like many individuals not at all familiar about how committees work, not familiar at all about the operation of our oath of office in relation to the operation of parliamentary privilege and also not familiar with how to answer certain questions—what about cabinet confidentiality? A lot of my role had to do with making sure people understood how a committee operated, how parliamentary privilege operated and what our responsibilities were as public servants in terms of co-operating with a committee of the assembly and how to respond to questions.

Mr. Peter Tabuns: And do you still have that role today?

Mr. William Bromm: Yes.

Mr. Peter Tabuns: So there have been witnesses who have come before us who have had an opportunity to talk with you before they sit down with us.

Mr. William Bromm: Yes. I would say primarily that it relates to public servants.

People are not required to meet with me before they come before the committee, and I certainly don't meet with all of the witnesses who have come before the committee.

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Mr. Peter Tabuns: But if a former member of the Premier's office or Cabinet Office is coming here and they request your assistance, you've been directed to give it.

Mr. William Bromm: Usually, with respect to any appearances by a public servant—I have not been involved in preparing any individuals from the former Premier's office, for example. That's sort of the separation of church and state; a lot of work for the Premier's office members would have been done by other individuals. I don't know who they would be. I would be involved mostly on the public service side.

Mr. Peter Tabuns: And just out of curiosity: You're familiar with the Archives and Recordkeeping Act?

Mr. William Bromm: Yes.

Mr. Peter Tabuns: And could you say that you follow that act?

Mr. William Bromm: I would say that I hope I follow that act. Yes, I would say that I follow the act.

Mr. Peter Tabuns: Okay. Are you the person in Cabinet Office who is managing this file right now for the secretary of cabinet?

Mr. William Bromm: It depends on what you mean by "managing" the file, but I certainly play a coordinating role in the government: monitoring the committee's proceedings, monitoring the motions that you pass and making sure ministries that are named in the motion understand their obligations. We've been named in motions—by "we," I mean Cabinet Office; I need to make sure that we produce our own records. So, coordinating the government's response to the committee, yes.

Mr. Peter Tabuns: And you brief the secretary of cabinet on what's going on?

Mr. William Bromm: Yes. I try to, yes.

Mr. Peter Tabuns: Do you brief anyone in the Premier's office on what's going on in committee?

Mr. William Bromm: I don't think they need me to brief them on what's going on in the committee. I think they're watching closely.

Mr. Peter Tabuns: Yes. I'm just looking up so they can see me on camera.

The cost of the Mississauga cancellation and its division between ratepayers and taxpayers—you weren't aware of this until there was testimony in committee?

Mr. William Bromm: No, actually; I wasn't. I might have seen some email in passing or heard some passing discussion about discussions around the province and the OPA, but because it wasn't a file I was involved in, I wouldn't have weighed in. I wouldn't have paid much attention to those emails or those discussions at all.

Mr. Peter Tabuns: In reference to an earlier question from Mr. Fedeli about the conference calls on Project Vapour: You were copied and notified that the meetings were taking place.

Mr. William Bromm: Yes.

Mr. Peter Tabuns: You were involved from time to time. When were you drawn in? What were you drawn in about?

Mr. William Bromm: Again, mostly I would be copied on them because I was in the secretary's office. Then, because I saw the meeting and it would be in my calendar, I would be able to go to her and say, "Do you have what you need? Is there any material that you need? Do you need me to sit in?" If the answer to all of the above was "I'm fine. I don't need anything" and "No, I don't need you," then I would step aside. So it would have only been on particular points in time—like the minister's direction letter—that I would actually become involved.

Mr. Peter Tabuns: And were there any other points you can remember when you were drawn into these teleconference meetings?

Mr. William Bromm: No particular points in time come to mind. The direction letter is the one that stands out the most to me because it's something that I actually wrote.

Mr. Peter Tabuns: Okay. Were you aware of the freedom-of-information request which included the Project Vapour Outlook records or request?

Mr. William Bromm: Yes.

Mr. Peter Tabuns: Did you find it odd that no one claimed to have any records at all about this?

Mr. William Bromm: I didn't have a particular reaction. I know about a range of FOI requests that are coming forward to Cabinet Office and the Premier's office because I would be copied on the FOI request, particularly if we need to do a search within the secretary's office, and I would be copied on the responses to the request. But unless I'm asked to actually give an opinion on the FOI request or how to interpret a particular request, I wouldn't otherwise have weighed in on it.

Mr. Peter Tabuns: In looking through the documents, TransCanada Enterprises reserved a right to sue Ontario even after the arbitration agreement had been signed.

Mr. William Bromm: Yes.

Mr. Peter Tabuns: Can you tell us about that?

Mr. William Bromm: I can tell you about that because I think there's an email that's been produced where I make some mention of being "sorted" out.

Mr. Peter Tabuns: Yes.

Mr. William Bromm: At the time that the arbitration agreement was being executed—and not being an expert in commercial negotiations—our understanding within the secretary's office was that at the time they actually executed the arbitration agreement, the lawsuit would be set aside. That was our understanding.

Then, at the time it was actually going to be executed, we learned that they would not actually sign off on the lawsuit unless the arbitration or the settlement discussions came to a successful conclusion, so we looked into that. Of course, the explanation made perfect sense once we looked into it because the party would say, "I have a bird in the hand. You're offering me another bird; I don't have it yet, yet you want me to let this one go. So I'm going to hold on to my lawsuit. We'll have our settlement discussions, and if that works, then I won't sue you. But don't ask me to give this up if there's no guarantee of a successful outcome here." From a commercial perspective, it made perfect sense to me. I emailed the secretary to say, "I'm sorted out," and that was the end of the matter.

Mr. Peter Tabuns: Just so that I'm clear, TransCanada entered into an arbitration agreement with the province but didn't, in signing on to that, give up its right to sue?

Mr. William Bromm: That's right. The example I would give is, if you're going to sue me for \$100, and I say, "Don't sue me. Let's leave the room and let's chat about settling this as gentlemen," and you then say, "Great; I'm going to sign a document promising not to sue you, waiving my right to sue you," and we leave the room, and I say, "Yes, I'm kind of done," you've lost your recourse. But if you say, "Great; I'm happy to leave the room, as a gentleman. Keep in mind; I still have option B. Let's pursue option A. If it works, great; option B will be dropped. But if it doesn't work, I have my option B."

Mr. Peter Tabuns: Maybe I misunderstood this, but once Ontario signed on to the arbitration agreement, and once TCE signed on to the arbitration agreement, did not that bind them at that point?

Mr. William Bromm: It bound them to a process, but what TCE was saying—in my understanding again, not a commercial expert at all—was, "I'm agreeing to the process, but I reserve the right to the outcome that I expect and to be able to pursue it in the manner I want. So let's try to settle this. No one wants to be engaged in a lawsuit. Let's focus on this path, but I'm not abandoning the other road."

Mr. Peter Tabuns: Okay. On August 3, 2011, you wrote to Chris Morley about the cabinet minute. You said that if a deputy were to sign the minute, the minister should give an explicit instruction to the deputy or acting deputy, especially if they have a "fiscal limit." Was a hard ceiling on cost authorized by the cabinet minute?

Mr. William Bromm: I think that's an email that precedes the minister's direction letter that I've talked about. The reference to the fiscal limit in there is the normal fiscal limit that exists across the government for how much any deputy can sign for. It wasn't with respect to the particular transaction; it was, "Keep in mind that a deputy can only sign up to a certain amount. In addition, because we're dealing with a matter under the Electricity Act, the deputy can only sign anything on the minister's direction."

Mr. Peter Tabuns: Okay. Were you in contact with Colin Andersen on a regular basis?

Mr. William Bromm: No.

Mr. Peter Tabuns: You exchanged emails with Chris Morley and David Lindsay on August 5: "Colin good with idea of letter w no change to agreement language. He knows timing..." That was your only exchange with Colin Andersen?

Mr. William Bromm: My recollection, again, just a recollection some time ago, was that the secretary at the time—Shelly Jamieson, not Peter Wallace—and Colin had a conversation. She would have relayed the information to me, and I was relaying it to Chris Morley and David Lindsay.

Mr. Peter Tabuns: You didn't have contact with Andersen other than that, then?

Mr. William Bromm: Not that I recall. I can't recall any direct contact with Colin—unless he called the office looking for the secretary and I happened to pick up the phone because I would see it's ringing and someone's not around, that sort of idea. I don't recall any content conversations on either project with him.

Mr. Peter Tabuns: Were you consulted by Shelly Jamieson when political staff were screened from participation in the TransCanada discussions?

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Mr. William Bromm: Yes, I was.

Mr. Peter Tabuns: What did Shelly Jamieson ask you about this matter?

Mr. William Bromm: Basically, the secretary had received some information from the Ministry of the Attorney General—it was fairly early in our involvement in the process—that there had been some discussions between TransCanada and members of the Premier's office. At the time, having been given a notice of a potential lawsuit against the crown, she wanted to talk about what steps needed to be taken because of that notice. Then we talked about implementing a screen, because they would have then been potential witnesses to any lawsuit, to ensure that they were not involved on any ongoing basis with discussions with TransCanada and to keep them out of the file.

Mr. Peter Tabuns: So what kind of risk did their discussions with TransCanada pose to Ontario's position?

Mr. William Bromm: From my perspective in cabinet office, I wouldn't have looked at it—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. William Bromm: —from the position of any risk. It was from the perspective of, you know that there are potential witnesses in a possible lawsuit; they should be screened out and set aside, both for their own interests and the interests of the province. But it had nothing to do with an assessment of any risk. That wouldn't have been something I would be involved in. I would simply be advising the secretary, "You are aware of some potential witnesses. You need to set them aside."

Mr. Peter Tabuns: The preservation of the records of those witnesses, would that have been of consequence to you?

Mr. William Bromm: Had I received a preservation notice, then it would have been of consequence to me.

Mr. Peter Tabuns: Should those witnesses have preserved all of their records?

Mr. William Bromm: My recollection is that there was no formal preservation notice given as a result of the notice of intent. It wasn't an actual lawsuit at that point; it was simply a notice of intent. A notice can be given and no lawsuit actually filed, and so an actual preservation order wasn't done at that time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Delaney.

Mr. Bob Delaney: Chair, just before I begin my questioning of the witness, on a point of privilege: I have heard the opposition trying to advance the theory that somehow, the government was trying to hide costs, and has used the term "two sets of costs." In the committee's work so far, I think it's important to hold forth some clarity around this. The testimony before the committee and the emails tabled to date show that the \$40 million and \$190 million numbers were provided to the government by the OPA. In terms of long-term costs, the Auditor General looked at the cost of operating the relocated plants over 20 years, not just the sunk costs. Using those same formulas, the OPA has come to this committee to update their estimates on the Oakville relocation.

Chair, all of this has been done openly and transparently in front of the committee.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. We'll accept your comments. It's not a formal point of privilege, which apparently our committee does not entertain, but please proceed.

Mr. Bob Delaney: Thank you.

Good morning, Mr. Bromm. Good to see you.

Mr. William Bromm: Good morning.

Mr. Bob Delaney: As counsel in the cabinet office—and I'm just going to recap some of the things that I think I've heard you say—you've worked with various ministries as they respond to the requests made by this com-

mittee for documents. Do you have any idea how many motions have been passed by this committee to date to produce documents?

Mr. William Bromm: I think about 32.

Mr. Bob Delaney: Okay. Would you know approximately the number of records or pages that have been produced?

Mr. William Bromm: I've heard various numbers. I haven't counted them, so I wouldn't want to say. I can't absolutely tell you that there have been X number; I can tell you, based on the ones that I myself have had to read, that there have been thousands of pages of documents given to the committee.

Mr. Bob Delaney: Just to clarify, these requests have all been separate and distinct from the original estimates committee motion, which at the time asked for documents—just documents—within a specific date range from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority, with very different terms and date ranges than those dealt with by this committee, correct?

Mr. William Bromm: That's my understanding, yes.

Mr. Bob Delaney: What are some of the challenges that ministries and the cabinet office face when responding to these motions?

Mr. William Bromm: You're going to make me cry.

They've been very difficult for a number of reasons. Although the government is in the document production business, on many occasions—and the secretary of cabinet has spoken to this—the powers of the committee is an added overlay that a lot of people are just not familiar with in terms of how we provide documents, whether or not you can redact documents and the decision about whether or not something is responsive.

The other added overlay is, when we have an FOI request or a court proceeding, we know with absolute certainty that we only provide material—we'll just call it responsive material, for the ease of reference. But, for example, if you ask for information about subject matter X, then subject matter Y and Z is out; and in a court proceeding or under FOI, that is clear, but the problem that we have is, in the government, we have what I'll call many mixed-use documents. We'll prepare materials that will talk about three different topics—cabinet agendas have a wide range of topics—and when a committee asks for a document related to the gas plant, it's easy when the document is only about the gas plant; it's much more difficult when the document is about the gas plant and four other things. Someone has to make the decision about, can we redact the other information? Can we sever? If we have five attachments and only one of them is about the gas plant, can we leave out the other four? Those are things that have been subject to a lot of discussion within the government, and the interpretation of the motion in and of itself is subject to a lot of discussion. When there are a list of code names, do we supplement the code names? What are the other code names that you use when you ask for documents and correspondence? What's the difference between a document and correspondence?—

many, many issues that are involved, with the overlay of a small period in which to respond.

We always want to give the committee the documents it requests, but in a small amount of time and with the operation of privilege, at the end of the day, we always err on the side of interpreting purposefully and broadly, and producing broadly. I think that has been difficult at times because of the volume.

Mr. Bob Delaney: Can this sometimes descend into the theatre of the absurd in terms of what is and isn't responsive?

Mr. William Bromm: Well, I wouldn't call it the theatre of the absurd. I think, though—fortunately there are only a few, but I do know of examples of documents that are voluminous that have one reference to a gas plant in an appendix, and therefore we produce the entire document, absent any authorization to actually redact the document or withhold everything but the appendix. Sometimes it's difficult to make a decision to only produce the appendix because then it loses all context as well, and then what do we do? Do we create a new document for the committee to explain what we've done in order to produce only a small portion of a document? I wouldn't call it the theatre of the absurd, but I would certainly say it's the theatre of the difficult.

Mr. Bob Delaney: Okay. If a staff member were to send someone from whom the committee has requested documents an email that said something to the effect of, "On the way home, I need to stop and get some gas. Plants need watering in your office," would it end up being accidentally caught?

Mr. William Bromm: Well, it might be accidentally caught, but the hope is that I've screened that out. Because we use keyword searches and electronic searches, if you enter the term "gas" or you enter the term "banana," for example—which is one of the legitimate terms the committee has asked to be searched—you would get many records that have nothing to do with a gas plant or Project Banana. I, myself, have had to read hundreds of banana bread recipes; I've had to read hundreds of apple pie recipes, because one of the keywords is "apple," but I try my best to make sure—

Mr. Gilles Bisson: Any good ones?

Mr. William Bromm: Not so far—too much cinnamon.

I try to weed them out, and when I send out my own search requests within Cabinet Office I try to say, "Please don't send me banana bread recipes. Please don't send me apple pie recipes." But because of the volume, it's entirely possible that by accident a document that we know for sure is completely non-responsive will be in there.

The documents that concern me more, and that I know concern the secretary more, are the documents that we know have responsive content but have other content that is not responsive. And what do we do with it? We're the public service. We support the committee. We support the government. It's not really up to us to necessarily say, "That's not for your eyes."

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Mr. John Yakabuski: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, on a point of order.

Mr. John Yakabuski: I fail to see the relevance to our mandate in asking questions of our witness regarding how difficult it is to do record searches. Our mandate is not about how difficult their job can be. Our mandate is about getting to the bottom of a Liberal Party campaign scandal and how it affects the people of Ontario. While it can be entertaining to find out—perhaps we will get some good apple pie recipes out of this—but I don't think that that's the work of this committee. The work of this committee is far more serious than that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. We appreciate your failure.

Please continue.

Mr. Bob Delaney: What seems to be the work of the committee, Chair, is that Mr. Bromm has pointed out a very strong need for the committee to give some direction on what should and should not be done with material that is clearly not responsive to an information request—and I think that's probably the subject of a future sub-committee meeting, and I thank him very much for some very relevant testimony.

When he testified before this committee, the Deputy Minister of Government Services explained that his ministry's search for records in response to this committee has been—and he has echoed some of your own terminology—complex and time-consuming. To use his own words, he said, "This search identified thousands of pages of records, many of which had no direct or indirect connection to the Oakville or Mississauga transactions. All of those records were reviewed by ministry counsel—that's probably you—"to identify those with responsive content. The records were also separately reviewed by the external law firm"—and he named them. Based on this account, it sounds like a lot of resources are going into responding to these committee requests.

Can you give us a sense of how the volume and scope of the requests impacts the various ministries involved?

Mr. William Bromm: There is significant resource that goes into it. It's part of our obligation as the public service. We support the government. We also support the Legislative Assembly. So I don't think anyone resents the time and resources that have gone into it, but they are significant, and they're significant when there is a large volume.

Also, because of the added overlay for the government services motion, because it was a motion that they actually searched for records not within their own ministry but in another office—it actually turned out to be a political office where we don't normally go—and also to conduct an electronic search only, which gives a high volume of records that you do have to sift through. That's what we have to do.

Mr. Bob Delaney: Would it be useful to you, in your role, to get more fine direction from the committee over what to do with information that forms part of a docu-

ment in which—a part in which a small portion of the document is responsive to the committee's request but many portions of the document are clearly not responsive to the committee's request? Would you like to have any better direction from the committee on what to do with those portions of documents that are not responsive to either the committee's mandate or to the request?

Mr. William Bromm: First, I would start by saying it certainly wouldn't be my responsibility to tell the committee how to do its work. You're all experts in your field. But I can tell you that there would be a sigh of comfort across the government if there were to be, for example, a clear articulation that, "The committee does not want, and no issues will be raised about the removal of, an unresponsive attachment to an email, as long as we get the material that's responsive to our request." That would satisfy a lot of debate that goes on.

We can have those discussions internally to the government, of course, and make those decisions. We have many senior people who can make those decisions. But it would always be easier if you knew, when you're producing a document, that there will be no issues with it.

Mr. Bob Delaney: Such clarification, then, would provide the committee all of those things responsive to document requests, but only those things responsive to document requests; correct?

Mr. William Bromm: Yes. I've never heard anyone ever talk about not wanting to give information responsive to the committee's mandate.

Mr. Bob Delaney: Okay. Thank you.

There has been a bit of debate over what records should and shouldn't be kept. In looking at the Archives and Recordkeeping Act, it explains that transitory records are not required to be retained, and the common records series defines these transitory records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

In fact, when we asked Secretary Wallace about his personal experience with transitory records, he said, "From the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant."

Does that seem to be an accurate characterization of transitory records, from your experience working in government?

Mr. John Yakabuski: Point of order, Mr. Chair.

The Chair (Mr. Shafiq Qadri): Mr. Yakabuski?

Mr. John Yakabuski: I really have to object. I don't think that the witness was brought here this morning to offer his opinions on how the Archives and Recordkeeping Act might be improved or changed. That's not

the work of this committee, and I think we should stick to our mandate.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Yakabuski. I believe that within the issue of production of documents, that qualifies.

Mr. Delaney.

Mr. Bob Delaney: To be clear, Chair, I have not done what Mr. Yakabuski has said.

Would you like me to reread the question, sir?

Mr. William Bromm: I don't think that's necessary.

It's certainly my understanding of a transitory record, according to the documents I have in my own Cabinet Office schedule.

Mr. Bob Delaney: I thank you for that. I think clarification around this issue is very important because, in fact, there's a wide misconception, wilful or not, that every piece of paper needs to be kept unless it's something like an invitation to go have coffee or lunch. But I think you would agree that it's not the purpose of either the freedom-of-information or the archive legislation to keep every single piece of paper. Correct?

Mr. William Bromm: Yes, that's correct.

Mr. Bob Delaney: In fact, the common records series outlines a number of records that should be deemed transitory, which would include, for example, duplicates, draft documents, records of short-term value, things like that?

Mr. William Bromm: Yes.

Mr. Bob Delaney: Okay. Could you describe for the committee what your record-keeping practices are? How do you determine if a record is transitory?

Mr. William Bromm: I don't think you want to use me as an example for the committee, because I keep a high volume of documents, going back many years, because of my particular role. I've been caught in circumstances where I have said, "No, no, I advised you of that," and then, "No, you didn't." That might have been a transitory record, and had I deleted it, then that would be the end of the matter. So I actually have a volume of information that would probably not impress the archivist because it's not information that he wants. However, when it comes time to actually look at records that are older and the project is finished, I can then weed that out. But on an ongoing basis, I'm not the model of record-keeping, because I err on the side of keeping it all.

Mr. Bob Delaney: Let's try it a different way, then. From the records that you've seen turned over to date, could a large fraction of them be deemed transitory in nature?

Mr. William Bromm: Absolutely, some of them would have been transitory records: "I'm not available at 4 o'clock. Can we do 5 o'clock?" Those sorts of emails, no question, are transitory.

There would be many emails where, I'm sure, if you asked three lawyers if they were transitory, you'd get five opinions. It's difficult sometimes.

Mr. Bob Delaney: The common records series also discusses a category of records deemed as private, which would include personal records as well as constituency

and party records. In fact, the Information and Privacy Commissioner described the class of records held by a minister as follows: “There are two general categories of records in the office of a minister and the Premier: (1) public records and (2) personal, political, and constituency records. The requirement” under the Archives and Recordkeeping Act “to have records retention policies in place applies only to the first category of records, and not to the second”; in other words, only to public records and not to personal, political and constituency records.

I just want to be clear on what these distinctions mean. My understanding is that there are certain records that are not subject to the Archives and Recordkeeping Act or to the freedom of information and privacy act. Is that correct?

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Mr. William Bromm: That’s my understanding.

Mr. Bob Delaney: Okay. I’d like to clarify the issue, then, of IT deleting email accounts. We’ve learned from some of the staff who have come here that the practice of deleting accounts after a staff person leaves the government, on both the political and the public service sides, is a common administrative exercise. Is that also your understanding?

Mr. William Bromm: Yes, that’s correct.

Mr. Bob Delaney: Secretary Wallace confirmed to us, and I’ll use his words, “The wrapping up of email accounts would be a perfectly routine business. It’s done in all businesses. There’s no expectation in the archives act or anyplace ... that records be kept forever in digital form, backed up in that approach. So it is routine that as individuals leave the Office of the Premier or any place ... within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down...”—again, just to confirm that the deletion of email accounts is standard practice government-wide, correct?

Mr. William Bromm: Yes, that’s correct.

Mr. Bob Delaney: Okay. From what I understand, the email accounts of 50 of the former Premier’s office staff—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Bob Delaney: —were preserved during transition, in light of an ongoing FOI appeal, which is why they were able to be searched in response to a committee request for documents, correct?

Mr. William Bromm: Yes, that’s correct.

Mr. Bob Delaney: Okay. Chair, I think I will stop there.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Mr. Fedeli?

Mr. Victor Fedeli: Thank you, Chair. I only have one question before I turn it over to my colleague Mr. Leone. I want to thank you, by the way, for your diligent record-keeping. Your 3,500 records truly were a great source of information. We knew that when we needed a document, we could always search through your name and the documents would be there. We’re grateful for that.

I want to go back to that August 5 letter. It was document 5 of 5. It’s the letter from Brad Duguid to David Lindsay.

Mr. William Bromm: Yes.

Mr. Victor Fedeli: Were you the author of this letter? I misunderstood your earlier comment.

Mr. William Bromm: The direction letter: Yes, I was.

Mr. Victor Fedeli: So you authored this letter.

Mr. William Bromm: Yes.

Mr. Victor Fedeli: Okay, now I understand. It does say there’s a determination of liability between the crown and the power authority. In this letter, it acknowledges there were two groups going to pay for the one set of costs.

Mr. William Bromm: Yes, there were two things that needed to be covered in the letter: (1) the direction to execute the agreement, and (2) the agreement between the crown and the OPA.

Mr. Victor Fedeli: So back on August 5, 2011, you were aware, then, that there were going to be two sets of payers, if you will.

Mr. William Bromm: Yes, I was aware that whatever the costs were—and again, as I indicated before, for me, I always see it as one set of costs that is divided between two parties; that there would be one set of costs and they’d be proportioned—

Mr. Victor Fedeli: I just needed to clarify that for the record. Thank you. I’ll turn it over to Dr. Leone.

Mr. Rob Leone: Thanks, Mr. Fedeli, for that.

Interjection.

Mr. Rob Leone: I was going to say something else, but I’m not going to go there.

The Chair (Mr. Shafiq Qaadri): Mr. Leone, please—

Mr. Rob Leone: Are you ruling that out of order, Chair? I’m not really sure.

The Chair (Mr. Shafiq Qaadri): I’d be very pleased if committee members would be addressed as “Doctor,” but that’s not the procedure here, Mr. Leone.

Mr. Rob Leone: Sorry, Doctor—Mr. Chair.

Mr. Bromm, the secretary of cabinet met with David Livingston in the summer of 2012 to talk about document disclosure. Do you recall preparing information for the meeting with the secretary of cabinet, for that meeting?

Mr. William Bromm: Actually, no.

Mr. Rob Leone: Okay. In document 7 of the package that Mr. Fedeli had released, there is an email that suggests—and the attachment to the email is what I’m really interested in, frankly, where you are part of an email chain to Jennifer Rook. On page 10 of that document—the title of the document is Briefing Note: Office of the Secretary of the Cabinet. In the email, it suggests that there are “three notes we did for the secretary’s discussion with David Livingston.” You have a briefing note attached to that. Do you see that?

Mr. William Bromm: Yes, I’m sorry. You’re correct.

Mr. Rob Leone: So you do—

Mr. William Bromm: I did prepare that information, yes.

Mr. Rob Leone: You did prepare that? Okay. On the last page of that document 7, page 10 of 10, the top-of-line issue is, “What are the legal requirements related to the retention, deletion and subsequent search of government records?”

Mr. William Bromm: Yes.

Mr. Rob Leone: At the time of Mr. Livingston’s and the secretary of cabinet’s discussion, information was relayed from the bureaucracy towards the government’s obligation to retain records.

Mr. William Bromm: Yes.

Mr. Rob Leone: Now, in your view, and given the Information and Privacy Commissioner’s report, do you believe that the government had followed the advice that you had set forth?

Mr. William Bromm: Oh, I would leave that to other people to have an opinion on.

Mr. Rob Leone: All right. So I’ll say not.

Mr. Livingston knew about the Archives and Record-keeping Act as early as the summer of 2012. My question to you is this: The government therefore knew last summer, a whole year ago, that they had responsibilities under this act, yet we’ve had many witnesses before this committee stating countless times that they did not know about their obligations under the Archives and Record-keeping Act, which I find very interesting, because clearly you had informed the government of its obligations way back a year ago, in August 2012, that they should follow the procedures in doing that.

So if I were to ask your expectations—first of all, do you believe or do you buy the line that simple staffers in the Premier’s office and the ministry offices wouldn’t have known about the obligations under the Archives and Recordkeeping Act?

Mr. William Bromm: I think it would be unfair for me to comment on what an individual within an office might know or not know. I can certainly comment on the memo and what the intention was here, but outside of that, I couldn’t comment on it.

Mr. Rob Leone: Clearly David Livingston knew about this a year ago, you would say. I’m sure you would agree that—

Mr. William Bromm: He received the note, yes.

Mr. Rob Leone: He received the note. And we have email documentation as late as January 2013 where he goes about asking about the deletion of documents from the secretary of cabinet and so on and so forth. What I find peculiar about this, (a), is the timing: August 2012, which is about two months before the Premier decided that he was going to resign and step down. But in addition to that, there seems to be a lot of information that has been shared, with this document and others that we’ve seen, that ministry offices and political staffers simply did not follow.

What is the process, on the bureaucracy side, of understanding the obligations of the Archives and Record-keeping Act? Do you have any information that you

share? Do civil servants understand the requirements of the act?

Mr. William Bromm: Well, we certainly hope so. There is information available. We’re really not in a paper environment anymore, but the public service itself has a website; ministries have their own websites. They would all have links to record-keeping requirements, and the expectation would be that individual ministries, who all have records managers, would be communicating their obligations to their individual employees under the act and making sure they’re aware of where information is available.

Mr. Rob Leone: Were you at all suspicious that the government was inquiring about the retention and deletion of information?

Mr. William Bromm: Suspicious? No.

Mr. Rob Leone: No. Okay. That’s interesting. I’m suspicious; I’ll tell you that.

Can you tell me how long before the last election the Premier’s office staff, Mr. Morley, had been discussing with you about the relocation of the Mississauga gas plant? Were there discussions prior to the election?

Mr. William Bromm: Yes, there were. They weren’t actually related necessarily to the relocation of the gas plant, but there certainly were some discussions regarding the Mississauga plant.

Mr. Rob Leone: Okay. Now, what were some of the considerations that were going through in conversations you had with Mr. Morley, perhaps?

Mr. William Bromm: Well, I think the former secretary spoke about this a bit. The government was aware in the summer, and prior to that, of course, of local opposition to the siting of gas plants—not necessarily connected directly to Mississauga, but obviously that was a very live issue. And there were some discussions going on in the summer about siting options: whether or not there could be changes to the siting policies for gas plants, what were the siting policies, what were the differences between the siting policies of a gas plant, for example, and a nuclear facility, or a gas plant and a wind-mill operation. So there were policy discussions around siting issues from a broader policy perspective. There might have been discussions about what, then, the impact would be on the change of that policy to Mississauga, but they weren’t necessarily focused on Mississauga alone.

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Mr. Rob Leone: I’m just looking for the email right now; I don’t really see it in front of me—all right; I do have it. The government, as late as August 31, 2011, which was about a week before the election was called, asked you about elevating the Mississauga issue to a full environmental assessment. Do you recall that conversation?

Mr. William Bromm: Yes, and I believe I gave the bad news that that wasn’t an option.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Rob Leone: All right. So in essence, what you were trying to get through to them was that a full environmental assessment was not permitted; you

couldn't do that because of a number of reasons. Could you share those reasons?

Mr. William Bromm: I'm happy to look at it if you can refer me to it, but I can, in my mind, see that email. I think the primary reason was that they were finished. They were already through their process, they had gotten their permits—the sort of idea that they were done that assessment process.

Mr. Rob Leone: Right. You said that in 2008 the minister reviewed the environmental assessment and could have stopped it, but the minister said no in 2008.

Mr. William Bromm: That's right. It's hard to—

Mr. Rob Leone: —reopen a decision you've already made.

Mr. William Bromm: —reopen what has been decided, yes.

Mr. Rob Leone: So that is actively the ministry saying, "This is going forward no matter what," and now we have, a week before the election is called, questions about blowing this up so that they could delay the cancellation costs?

Mr. William Bromm: Yes, and that was, obviously from the content, specifically about Mississauga, as opposed to the other discussions I refer to and policy questions around siting in general.

Mr. Rob Leone: Clearly they were worried, leading up to that election, about this Mississauga relocation.

Mr. William Bromm: I wouldn't know whether they were worried.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Leone.

Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Thank you, Chair. Just a few items to clean up, Mr. Bromm. Just for me to be clear again on this arbitration matter: The government of Ontario decided—agreed with TransCanada—to engage in a binding arbitration process to resolve the conflict over the Oakville plant. The TransCanada position was to preserve their right to sue. I imagine that, if they didn't like the outcome of the arbitration, they would go forward with a lawsuit. Is that correct?

Mr. William Bromm: That's sort of my general understanding. I'm probably not the one to try to shed the clarity that you need, not being a commercial expert, but that was sort of my general understanding, that it was normal commercial practice that they would not waive the lawsuit until the end of the optional proceedings.

Mr. Peter Tabuns: Okay. The screening-off of political staff—if there had been a lawsuit and if those staff had been called as witnesses, what was the threat or problem for the Ontario side of the lawsuit?

Mr. William Bromm: We would not have approached it as a threat or a problem; we would have approached it from the perspective that once you're a witness in any proceeding, you need to be set aside from any further discussions about that same proceeding. It's a routine step within the government, and there are many screens that exist in the government. Someone who has been involved in one aspect of a file should not become

involved in the continuation of the file if there is a lawsuit and they may be a witness.

Mr. Peter Tabuns: After action had been taken to cancel the Mississauga plant, was there general notice given out to ministers and political staff to stay away from all of this?

Mr. William Bromm: By general notice?

Mr. Peter Tabuns: Sorry. Did the secretary of cabinet at that point, having gone through Oakville, take steps to ensure that no political staff were going behind the OPA or behind the Minister of Energy to make their own deal with Eastern Power developers?

Mr. William Bromm: There was nothing in writing, but if I remember correctly from the former secretary's testimony, she did have discussions with the Premier's office, saying, "If we're going to follow the model that we followed with Oakville, this is the route we're going; there can be no side conversations."

Mr. Peter Tabuns: And did she see that there were problems with the side conversations that had existed the first time around?

Mr. William Bromm: Well, I think from her perspective it was that you need to serve one master. If one person is leading the negotiations—if they're being co-ordinated through one direction—there can't be things happening somewhere else this person doesn't know about.

Mr. Peter Tabuns: The questions from my colleagues in opposition about discussions with Mr. Morley about the Mississauga plant prior to the 2011 election: You said that at that point, you weren't discussing relocation. Were you discussing simple cancellation of the contract?

Mr. William Bromm: I don't recall whether or not there was any discussion about the cancellation of the contract. The discussions I recall mostly were the policy discussions I referenced—and then obviously, once the email was mentioned, I recalled that more particular conversation. It was about dealing with Mississauga particularly. But I don't recall discussions about relocation.

Mr. Peter Tabuns: Okay. With regard to the production of documents at the request of this committee, did people understand that it was legally binding for them to turn over documents, whether it was politically inconvenient or not?

Mr. William Bromm: I guess it depends on what you mean by "Did they understand?" I can only speak to what my role would be in communicating to the individuals—

Mr. Peter Tabuns: Were they informed that they had to turn over the documents?

Mr. William Bromm: I think it was never as "Yes or no?" a question as that. From my role as legal counsel, if I'm involved with someone talking about a motion of a committee, I would be explaining the operation of parliamentary privilege, the request for documents—that you can request anything you want and anything that exists—and that at a point when there is a document that might have a sensitivity attached to it, it's always open to you to go before the committee and seek its accommodation, whether it's to not release or to redact or to go in camera

or to have some side proceeding. But at the end of the day, when the committee decides, “We understand your request. We’re interested in those documents,” then there are risks attached to proceeding in certain ways, and you can mitigate your risks by proceeding in other ways.

Mr. Peter Tabuns: And were members of cabinet and others like Chris Morley aware that the motions were binding and that there were consequences for not complying?

Mr. William Bromm: I can’t speak to what other individuals know. I can only speak to the individuals I might have been involved with.

Mr. Peter Tabuns: Which individuals were you involved with?

Mr. William Bromm: My discussions would have been primarily with individuals within the government, other deputy ministers when they were having motions. I certainly would have been involved in some discussions at various points in time with the Ministry of Energy, for example, on the estimates motion.

Mr. Peter Tabuns: Any other ministries?

Mr. William Bromm: The Ministry of Finance, the Ministry of Health, within Cabinet Office, I think those are the primary targets—I shouldn’t say “targets”—the subject matter of most of the motions passed by the committees.

Mr. Peter Tabuns: And did you consult at any point, or were you consulted by, the OPA on this matter?

Mr. William Bromm: No. They would have their own independent counsel. There might be some discussions going on with other parties just in terms of how document production is going, but I wasn’t involved in any of those discussions.

Mr. Peter Tabuns: Did cabinet, the Premier’s office listen to your advice on production of documents?

Mr. William Bromm: I personally never provided any advice to cabinet or the Premier’s office on particular document issues. Certainly within Cabinet Office I give my advice to the secretary on what the motion means, what our options are for producing the records. I would have some discussions with members of the Premier’s office on what a motion might mean. With respect to the current motions, I think they understood what the motions call for.

Mr. Peter Tabuns: Do you have a question?

Mr. Gilles Bisson: Yes.

Mr. Peter Tabuns: Go ahead.

Mr. Gilles Bisson: Did you ever have any interaction with Dave Phillips from the government House leader’s office?

Mr. William Bromm: Yes.

Mr. Gilles Bisson: With regard to the release of the documents?

Mr. William Bromm: Not with respect to the release of documents per se. My interaction with him would have been in relation to the operation of parliamentary privilege, those sorts—

Mr. Gilles Bisson: That’s right.

Mr. William Bromm: —but that’s higher level than the release of a certain document.

Mr. Gilles Bisson: No, but the discussion around the right of the committee to request documents?

Mr. William Bromm: Absolutely.

Mr. Gilles Bisson: You’ve had that. And what kind of advice did you give him—that in fact, the privilege of the committee was pretty well absolute?

Mr. William Bromm: That would have certainly formed a portion of my advice. I would have given advice on—

Mr. Gilles Bisson: When did you tell him that?

Mr. William Bromm: We were having discussions during the summer of 2012, following the passage of the estimates motion, but I would out of fairness want to make it clear that I would never, at any point in time, have said, “You must produce these records.”

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Mr. Gilles Bisson: No, but he would have asked; you would have answered the question. In fact, when a committee requests documents, you have to produce.

Mr. William Bromm: Or, “These are the options available to a minister who wants to raise issues about a document”—

Mr. Gilles Bisson: Did you ever talk about options of being able to partially release the documents?

Mr. William Bromm: I can’t recall any specific conversations, but it would make sense for us to have had discussions about, “Do you have discussions about all your documents? Are there documents that can be released and documents that can’t?”

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Gilles Bisson: Okay, so just for the record, you did have discussions in regard to the right of the committee to request those documents back in July 2012.

Mr. William Bromm: By July, although I couldn’t remember the exact date, I would certainly say we would have been having discussions about that.

Mr. Gilles Bisson: Are there any briefing notes? Did you get any briefing notes from Mr. Phillips on that case, or did you give him any briefing notes?

Mr. William Bromm: We exchanged a fairly high volume of documents and we’ve produced quite a number of those documents. I would have provided some notes and also press—

Mr. Gilles Bisson: In regard to the matter of privilege requesting the documents.

Mr. William Bromm: Absolutely, yes.

Mr. Gilles Bisson: Were those given to the committee?

Mr. William Bromm: Yes.

Mr. Gilles Bisson: They were? All right.

Mr. Peter Tabuns: In my remaining seconds, these briefing notes that you provided to Peter Wallace were the basis for his discussion with Livingston on what had to be preserved?

Mr. William Bromm: They were having some general discussions at the time, but I wasn’t—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair.

I have some final questions around the government's actions on the openness and transparency that we've discussed here this morning.

As I'm sure you'll recollect, after Premier Wynne was sworn in, she brought the House back exactly according to the legislative calendar and then reconstituted committees, including this one, the Standing Committee on Justice Policy. Can you speak to the committee's mandate with regard to the original allegations with which it was charged and any changes in that mandate that have occurred?

Mr. William Bromm: If I understand your question, you just wanted to know if I was involved in any of the discussions about changing the mandate of the committee?

Mr. Bob Delaney: No, about the broadening of the mandate of the committee.

Mr. William Bromm: I am aware there were discussions, because obviously at the start of the second session, with the revival of the point of privilege, it would have been focused solely on the point of privilege related to the production of documents by the Ministry of Energy, and there were discussions about the interest in having a committee look at more than just the point of privilege, but actually the gas plant transactions.

Mr. Bob Delaney: Okay. Well, that sort of squares with some of the testimony that we've heard, because of course the Premier called in the Auditor General to review the Oakville relocation. The Premier herself has testified at the committee, along with several other members of the current and former government. And the government has provided more than 100,000 documents in response to committee motions, including more than, I gather, 30,000 from the Premier's office itself.

A number of the materials that have been disclosed included documents from Cabinet Office. Could you confirm to the committee that your office has acted in good faith to turn over documents according to committee requests?

Mr. William Bromm: Oh, absolutely. My perception would be that we, yes, turned over everything we thought we had that the committee requested.

Mr. Bob Delaney: Thank you. A question, then, about the Premier's office responses to the issues raised by the Information and Privacy Commissioner. Could you comment on the reaction of the office of Premier Wynne to the Information and Privacy Commissioner's report and the steps taken to ensure that staff are aware of their responsibilities under the Archives and Recordkeeping Act and the Freedom of Information and Protection of Privacy Act?

Mr. William Bromm: I wasn't involved directly, but I know that following the discussions with the commissioner, they talked to Ministry of Government Services individuals about training sessions on record-keeping

obligations for political staff. I didn't prepare the materials or present them, but I know that they took place.

Mr. Bob Delaney: Okay. Let's go back to some of your work at Cabinet Office. I want to talk about some of the negotiations between the government, the OPA and TransCanada Energy.

We've heard a lot about the possibility of these negotiations ending up in arbitrations if discussions broke down. I believe Mr. Tabuns explored that a little bit. What was the actual outcome of the negotiations?

Mr. William Bromm: The matter was settled.

Mr. Bob Delaney: So it didn't have to go to arbitration?

Mr. William Bromm: They were in arbitration proceedings. Again, because I was unable, I think, to satisfy Mr. Tabuns's questions, I may not be the person to actually respond to this, but my understanding is, they were in arbitration, they suspended, they went back to settlement discussions—resolved it through settlement discussions, not through formal arbitration. That's my recollection.

Mr. Bob Delaney: In the end, people of good faith worked it out reasonably.

Mr. William Bromm: As far as I know, it's resolved.

Mr. Bob Delaney: Okay. Chair, I think that's all I have to ask. I want to thank you very much, Mr. Bromm.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Delaney.

Thanks to you, Mr. Bromm, for your testimony and presence.

We'll take a five- or 10-minute recess. Gentlemen?

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you.

The committee recessed from 1026 to 1037.

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the committee back into session. We have our next witness, Mr. David Phillips—

Mr. John Yakabuski: Chair—

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, yes?

Mr. John Yakabuski: Before you swear the witness in, because I do not want to affect the time available to the committee for the witness and the three parties for the questioning, I would like to request some clarification with respect to the discussions last week surrounding your ruling concerning the questioning of witnesses pertaining to the attempt to influence the Speaker by Liberal operatives. You ruled that that would not be allowed at this committee. As you're aware, subsequently House leaders have made it clear that they will be tabling motions to take further action when the House reconvenes.

But I do want to raise the issue of the discussions. I was not here on August 6, when that matter was first discussed, but I was here last week, and I raised the issue with Mr. Sibenik concerning why other questions that had absolutely nothing to do with the mandate of this committee have been allowed continuously before this committee. He implied very clearly in his answer to me

that those questions were allowed because there was no objection to them being asked.

I couldn't question Mr. Sibenik's position on that at the time because I wasn't here on August 6, but I have subsequently looked at the Hansard from August 6. On August 6, at the very opening of the meeting, Mr. Chair, once you brought it to order, you made the ruling at that time that there would be no questions. If I can read the important part: "In light of the last batch of documents provided to this committee, I would like to make something clear before we begin today. It is the Speaker's finding of the prima facie breach of privilege that forms part of our terms of reference, and not the process by which that ruling was determined. Please know that I will disallow any line of questioning that I feel is outside of this committee's terms of reference, and that will become apparent, most likely, as the day proceeds."

The implication from Mr. Sibenik was that the tipping point was that there were no objections to questions previously. Chair, there were no objections to asking these kinds of questions of witnesses before the committee because if there was an objection, that would have been part of this Hansard. So members of the government did not object to that line of questioning; members of the third party did not object to that line of questioning; and certainly, members of our party did not object to that line of questioning. So I would need some clarification as to why that explanation was given to me, as a member of this committee, that objections had something to do with the ruling.

There was no subcommittee meeting prior to the August 6 meeting explaining to us that that would not be allowed. There was no communication from the committee Clerk telling us that that line of questioning would not be allowed. So I'm really concerned that I was given an answer that speaks very clearly that objections were a part of the decision. There was no objection to asking witnesses before this committee about their knowledge of attempts by Liberal Party operatives to influence the Speaker of the Legislature.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. While I will not comment particularly on what you've just raised right now, I believe the Chair, in consultation with the table officers following due parliamentary procedure, with weighing in by our legal representatives here, have given you as much information as we possibly can. I am directed, in consultation with my colleagues here and table officers, that should you object to that ruling you are entirely free to appeal it at the appropriate time. I will entertain no further debate, with respect, Mr. Yakabuski, on that particular ruling.

If you'd like me to actually read for you precisely why I'm enabled to do so, I have an entire two pages of documentation, and I'm happy to distribute that to you.

Mr. John Yakabuski: I have no doubt you have the authority, Chair.

The Chair (Mr. Shafiq Qaadri): And, as I say, just from my own perspective, we have ruled, in due accordance with parliamentary procedure, given the mandate as

it stands, and those are the last words that I will be executing on that.

Mr. John Yakabuski: No clarification? No explanation on why that was—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

MR. DAVID PHILLIPS

The Chair (Mr. Shafiq Qaadri): I will now invite Mr. Phillips to please be sworn in.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. David Phillips: I do.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Phillips. Welcome. You have a five-minute opening address and questions to follow.

Mr. David Phillips: Good morning, Mr. Chair, Madam Clerk and committee members. My name is David Phillips, and until January of this year I was the chief of staff to the government House leader and the director of legislative affairs in the Office of the Premier. It's an honour to appear before you today.

I got my start at Queen's Park in the spring of 1999 as a 19-year-old, first-year, University of Toronto student working in the office of the opposition environment critic and my hometown MPP, Jim Bradley, as a volunteer.

Over the next four years I had the privilege of working in opposition at the Legislature and being mentored and influenced by two esteemed members who are highly regarded on both sides of the aisle: Minister Jim Bradley and Sean Conway.

In the fall of 2003 I attended law school at Western and thereafter articulated and practised law in the national labour and employment practice group at McCarthy Tétrault in their Toronto office.

Following the 2007 election, I returned to Queen's Park to serve as senior policy adviser to then-Attorney General Chris Bentley, in the areas of criminal and human rights law policy. I went on to become chief of staff to Minister Bradley, serving at the Ministries of Transportation, Municipal Affairs and Housing, and Community Safety and Correctional Services.

Following the 2011 election, I was asked to take on the position of chief of staff to the government House leader and director of legislative affairs in the Office of the Premier. I had three areas of responsibility. I was the government's principal staff-level representative in the Legislature and political adviser on parliamentary law and procedural matters. In this capacity I was responsible for providing advice to the government House leader and caucus on a wide range of legislative matters, and worked closely with Cabinet Office, the Premier's office,

ministers' offices, the Office of the Clerk, and opposition members and their staff.

In addition, my staff and I supported the government House leader in shepherding legislation through the House and its committees. Finally, our office served as lead advisers on parliamentary law and procedural matters to the government caucus with respect to contentious committee and House proceedings, including the public accounts committee investigation into ORNGE air ambulance.

I think it will be helpful for the committee if I detail my involvement in the matters falling within its current mandate. I provided extensive advice on the legislative aspects of this issue throughout 2012, including the estimates committee hearings between May and July and the House's consideration of Mr. Leone's point of privilege and subsequent referral motion during the fall session. I was not engaged, however, in the government's decisions to not proceed with the Oakville and Mississauga facilities and the subsequent negotiations and proceedings regarding settlement and relocation, nor was I engaged in the Ministry of Energy and Ontario Power Authority's efforts to search for, identify, and vet records that were responsive to the estimates committee's motion of May 16, 2012.

Finally, I would like to inform the committee that, at my request, the Clerk kindly provided me last week with an electronic version of the over 1,900 pages of records that I saved and catalogued in my email account and hard drive, that were present on my computer when I left Queen's Park earlier this year, and that have since been produced to the committee in response to a motion for production. I have reviewed these records in preparation for my appearance here today. I believe the records provide a first-hand account of the work that I performed and the analysis that I provided on this matter throughout 2012 and into the early weeks of 2013.

In particular, these records establish two sets of facts that are critical and highly relevant to this committee. First, throughout 2012, the government's primary objective was to facilitate the release of the papers requested by the estimates committee, but in a way that reconciled two important public interests: preserving the integrity of the confidential and sensitive commercial negotiations and proceedings relating to the settlement and relocation of the Oakville and Mississauga facilities, and protecting the sanctity of the constitutional principle of solicitor-client privilege, which has been recognized by the Supreme Court of Canada and the Afghan detainee panel as sacrosanct and worthy of the utmost protection, including by parliamentarians.

In addition, the records demonstrate that in the early days of the fall 2012 session, the government was highly concerned about the dysfunctional and extreme circumstances confronting the Legislature, most notably the unprecedented pursuit of contempt charges against the Minister of Energy and the associated threats in the House and media of incarceration and disbarment.

Until January of this year, I was an adviser to the government House leader and the Office of the Premier and, as such, my advice incorporated political deliberations as is appropriate within our parliamentary democracy. In this respect, I always approached my role as being a pursuit of that place where good public policy, good parliamentary law and procedure, and good politics meets. With that, I am here to help the committee in whatever way I can. I look forward to all of your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Phillips.

Mr. Tabuns or Mr. Bisson, you have the floor.

Mr. Gilles Bisson: Well, thank you for that. It gets to a couple of the questions I wanted to ask, at the very least. You explained your role in regard to both your job in the government House leader's office and the job that you had as the director of legislative affairs in the Premier's office. Is it fair to say that the Premier's office was completely aware of what was going on strategically when it came to what—the request that the estimates committee had put forward? Did you, in your role, inform the Premier and the Premier's office of what was going on in detail?

Mr. David Phillips: Given the sheer pace and volume of issues that are being dealt with by senior staff in the Premier's office on a day-to-day basis, I think it's very safe to say that, in the early days of the estimates committee proceedings, there was very little to no discussion of the proceedings. But, as we moved forward, I would say the tensions increased, and it became very clear from the standpoint of the government House leader's office that there was going to be limited, if any, flexibility on the part of the opposition parties with respect to some of the positions that we were putting forward; there was increased awareness within the Office of the Premier.

Mr. Gilles Bisson: But it's fair to say that your role was not only to advise the Premier in regard to what was going on in the strategy, but they would have been pretty well aware of what was going on. It's pretty fair to say.

Mr. David Phillips: My involvement with respect to the Premier's office: First of all, I reported directly through the chief of staff to the Premier, not to the Premier, so the extent to which I personally engaged with the Premier on these matters was limited. My role, for the most part, until we got very far down the road on this, was to keep folks in the loop, and—

Mr. Gilles Bisson: And you were acting as liaison between the government House leader's office and the Premier's office in that role, essentially.

Mr. David Phillips: And the Minister of Energy's office.

Mr. Gilles Bisson: That's right.

Mr. David Phillips: With the Minister of Energy at all times issuing the directions.

Mr. Gilles Bisson: Who was it that initially made the decision not to allow the documents to be released as per the request of the committee on estimates?

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Mr. David Phillips: I don't say this to sound cute in any way, but I think it's safe to say that, first of all, it's very important to indicate from the outset—and I think the records that you have from me clearly show that it was the Minister of Energy at all times, with respect to the Ministry of Energy records at least, who was providing the final direction on these matters. But there was no decision on the part of anyone not to release the records. Again, I don't say this in any way to be cute, but I say it in a way that—the documents, which provide a very good first-hand account, demonstrate that at all times we were trying to find a reconciled solution.

Mr. Gilles Bisson: In fairness, you were centrally involved in what the machinations of the estimates committee were in regard to trying to not allow the motion that was put forward by the opposition to release the documents. Clearly, it was not in your interests, and neither was it your desire, to release those documents that were requested.

Mr. David Phillips: I just point to the evidence, and the evidence is that on the day that the Mississauga matter was settled, the documents were released, except those documents that were covered by solicitor-client privilege. That evidence speaks to the fact that there was no effort for no documents to come out. There was an effort to have these documents come out in a way that, first and foremost, protected the sanctity of these negotiations and also protected the Constitution, quite frankly.

Mr. Gilles Bisson: It's clear to me, because as the House leader for the third party, I was dealing with your office at the time, and you guys were integrally involved in trying to find a way not to allow that motion to go forward. I guess the question becomes, where did you get under the impression that you didn't have to release those documents in the way that the committee wanted? Who did you talk to? Who gave you the advice that, somehow or other, the right of the committee to request documents and people, persons or things, which is a right of the committee—where did you get the idea that in fact, somehow or other, solicitor-client privilege trumped that?

Mr. David Phillips: If you'll indulge me just for one moment, I can tell you what my thinking is—and that's all I can tell you—and that is that this was the first minority Parliament that Ontario had had in decades, a true minority Parliament; I wouldn't count the 1985-87 situation in that category. Obviously, none of us had a good sense as to how relations would be in the Legislature, particularly when it came to requests for documents. But we did have precedent to go by, and if you look at the Afghan detainee matter, while it was certainly a pressure-filled situation, ultimately a reconciled solution was reached.

We knew from the start that Parliament had an absolute right to these documents; that was the rule and that was the law. But we also knew that there was a long-standing parliamentary tradition not only in this place, but in every single Parliament across the Commonwealth, where when public interest considerations are raised by

means of a red flag by a minister, there is a good-faith effort on all sides to find a way to reconcile those interests. We weren't clear, going into the estimates committee process, on whether or not that was going to take place. What my records show was that from May right through to October, the government, through debate and amendments, and then ultimately through a series of proposals, was trying to put forward a series of solutions to both opposition parties that would facilitate the release of the documents but in a way that didn't torpedo the negotiations.

Mr. Gilles Bisson: All right, okay—used enough time.

Listen, it's pretty clear what Milliken did. He essentially said that the committee had the right to those documents. There was never any question as to the right of the committee to have the documents. In fact, he said that “procedural authorities are categorical in repeatedly asserting the powers of the House in ordering the production of documents. No exceptions are made for any category of government documents, even those related to national security.” Certainly to God, if national security doesn't trump the right of the committee to get those documents, solicitor-client privilege doesn't trump it either.

I guess when we look at the evidence in regard to the trail of emails that you have, it's pretty clear, dating back to July, that in fact you knew that, and you've so much as admitted to it. We take a look at July 4, in regard to the document you provided the Premier's office. You said, “Motion compels the government to produce documents relating to both Mississauga and Oakville, meaning we will potentially be compelled to produce Oakville documents prior to resolution” of those negotiations. We then go and take a look at a document on July 19, where it's essentially the same. It says, “In the gas plant matter, the committee report will likely not be found to be deficient....” That is with regard to when you were thinking of actually trying to challenge this.

You were pretty clear at that point that you had to release the documents. I guess the question is, who gave the order to try to drag out the process to release the documents, or try to control those documents in some way? Who gave the order? Who was the person in charge who wanted to do that?

Mr. David Phillips: Again, the benefit for the committee in this, with respect to my evidence, is that you have nearly 2,000 pages of my emails. I've got the emails here; I brought them for you. I'm happy to hand them out at the conclusion, if you want. What it demonstrates in one case, an email that was just shortly after this memorandum that you just referred to, which was before we came back to the July 11 estimates committee hearing—it's an email from me providing a recommended option to the Minister of Energy's office, in which I clearly say, “This is for the minister's consideration.” The minister's staff gets back to me and says, “We'll run this by the minister”: clear evidence that the Minister of Energy

throughout this period of time was providing the direction.

I can say very clearly, from dealing with his office throughout this period, that the Minister of Energy was clearly conflicted by the fact that he had some obligations that were competing with one another. He had the obligation to the House with respect to the production of records, but he also had a duty as a member of the executive council of Ontario and as a very long-standing and highly reputed member of the Law Society of Upper Canada to serve his duty to the financial interests of the people of Ontario and to the constitutional principles that define privilege—

Mr. Gilles Bisson: But you knew, in these emails—I can go through and read all your memos and read all your emails for the record, but that would just take more time than we have here today. You were pretty clear and you were pretty categorical in your advice to the government that in fact the committee had the right to those documents and in fact solicitor-client privilege didn't trump that right. But yet the government continued to stymie both the committee on estimates and, further, into the House, the process of releasing those documents. There were tons of ministers getting up in the House at that point and saying, "Due to solicitor-client privileges, we don't have to release those documents," when clearly they knew that wasn't the case.

Mr. David Phillips: Right.

Mr. Gilles Bisson: So the question is, who was orchestrating that particular attempt to not release those documents? Was it the minister? Was it the government House leader's office? Was it the Premier? Who was trying to stymie the release of the documents?

Mr. David Phillips: The way that it worked from the House leader's office, from my perspective, was that I was very clear on who the directing authority was with respect to these matters, and that was the Minister of Energy as the individual who, at the end of the day, was responsible for producing these documents. It was important to me that I was clear on what the Minister of Energy's preference was. Then it was our job, as I indicated at the outset, to be the lucky individuals who became learned in parliamentary law and procedure for the purpose of deploying a strategy that would attempt to achieve the objectives.

But the very critical thing here—I'm concerned that you mischaracterize what it was that the government was trying to do here. My records show from start to finish that this was not an effort to not have these records come out. It was an effort, through debate and amendment at estimates and then through negotiations in July and October, to find a halfway-house solution—

Mr. Gilles Bisson: The Speaker found a *prima facie* case of contempt of the minister not releasing the documents.

Mr. David Phillips: That's correct.

Mr. Gilles Bisson: So, clearly, the Speaker is convinced that there was a case that in fact you guys were

not releasing the documents as per the request of the committee.

Mr. David Phillips: Right, and my records—

Mr. Gilles Bisson: And my question to you, Mr. Phillips, is, if the government knew that in the end they had to give up these documents, who is it that directed the people within the government and essentially the committee members to try to stymie the process and not release the documents? Was it the Premier's office? Was it the government House leader's office? Was it Mr. Bentley's office? Or was it a combination of all three?

Mr. David Phillips: First of all, I fundamentally disagree with your use of the phrase "stymie," because, again, that's not what I—

Mr. Gilles Bisson: So the Speaker just made all this up; this whole ruling of a *prima facie* case is just—

Mr. David Phillips: No, no. Mr. Bisson—

Mr. Gilles Bisson: The Speaker just decided one day to do that for something to do?

Mr. David Phillips: You've got a series of fairly formal memoranda that I drafted throughout this period of time, and what I think it shows is that the government was aware—that I was certainly aware, and it was the advice that I was providing to the different parts of the political offices of government—that the House and the committee had an absolute right to these records. But it also was pointed out that there is a long-standing tradition around this place for parliamentarians to work together when a public interest is raised. The interesting thing that I found throughout this exercise is that nobody in the opposition has suggested that the public interest that the Minister of Energy and others were raising was illegitimate. Nobody has suggested that the protection of these negotiations was not an important thing. It just hasn't been addressed.

Mr. Gilles Bisson: I think what is being suggested is that it was in the government's interest and the Liberal Party's interest not to release those documents because they knew that the amount of money that was suggested it would cost for cancelling was a lot higher than you guys had been saying. There was all kinds of political motivation for you guys not to do this, so you choose not to answer the questions in regard—

Mr. David Phillips: Well, if I could—no? Okay.

Mr. Gilles Bisson: Okay, I've asked the question two or three times and you didn't.

It's clear at one point that you guys were actually looking at a third-party judicial challenge to releasing the documents. I go back to the July 13 memo that you sent back, I believe, to the Premier's office. It says in here, "If a third party was to judicially challenge a request by a committee for the production of documents it is likely that the third party would be unsuccessful in court. The courts have found that pursuant to the Constitution Act, 1867, the House is presumed to possess the privileges necessary for the proper functioning...." And it goes on to say, essentially, in a very long next page, that the committee has the right to have those documents, and you can't trump that.

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So, again, I go back to you. The problem I have with you is twofold: On the one hand, what you were doing publicly, and what you were doing to this committee, or the estimates committee, in regard to release of the documents, was trying as best as you can to make it that the committee didn't have to release those documents, both within the estimates committee and then what went on in the House around the debate. But then, when we look at the emails and the backgrounder, it was pretty clear that you guys knew you had to give them up. So your public discourse was one thing, where you were trying to hide behind solicitor-client privilege, but your actions—not your actions, but your advice in the background was, in fact, that you guys had to give them up. So why didn't you just give them up in the first place?

Mr. David Phillips: There are two things. Do you want me to deal with both—

Mr. Gilles Bisson: You can deal with them any way you want.

Mr. David Phillips: Okay. So I'll deal with the last question—I'll deal with the court reference issue thereafter.

Mr. Gilles Bisson: How much time, Chair?

The Chair (Mr. Shafiq Qaadri): Seven minutes.

Mr. David Phillips: The very first amendment that was moved in the estimates committee process when this motion was moved was for the motion to be amended, strictly to incorporate two principles: the protection of solicitor-client privilege and the protection of—

Mr. Gilles Bisson: But you know there was no solicitor-client privilege. You knew that according to your own documents. So what was the game here?

Mr. David Phillips: —and the protection of the negotiations. If those amendments had been adopted, the motion would have passed and the documents would have come out at the appropriate time.

Mr. Gilles Bisson: You knew that both those things were trumped—

Mr. David Phillips: From the very start of the process, we were willing to release them.

Mr. Gilles Bisson: But you knew, at that point, that both those things were trumped by the right of the committee and this Legislature.

Mr. David Phillips: No—

Mr. Gilles Bisson: So why, then, did you guys run contrary to what you knew was the fact?

The Chair (Mr. Shafiq Qaadri): Gentlemen, one individual speaking at a time is our preference.

Mr. Gilles Bisson: That's right, Chair.

Mr. David Phillips: Again, I go back to the very first amendment that was moved by the government, and a series of amendments thereafter, was fundamentally focused on reconciling these two interests. There are emails that were produced as part of my 1,900 emails, and I've got them here, and I can give you copies of them if you want. Some of them are emails with your opposition staff. What they are is, before that July 11 estimates committee meeting came back—it was us providing a

proposed revised motion that would have facilitated the release of the Mississauga documents.

Mr. Gilles Bisson: I accept that. I know what you did, and it was pretty clear that you were trying to find a way to release the documents in a way that was better for you. I understand that—

Mr. David Phillips: No. It was better for the people of Ontario.

Mr. Gilles Bisson: —but the point is that you knew you had to release the documents, and the advice that you were giving them behind the closed doors was very different than the actions your government took. You guys were trying to stymie the release of the documents in any way, shape or form, while you knew that, in fact, the committee had this right. So who overrode you? Who is it at the end who said, "No, no. We're going to follow this other track"?

Mr. David Phillips: Again, I'll just say that the records that you have in front of you are being, I would say, grossly mischaracterized in terms of what you say was being communicated—

Mr. Gilles Bisson: You're the one who wrote the memos.

Mr. David Phillips: That's right; I did write the memo, and what the memo said was that Parliament has an absolute right to these documents, that there is a long-standing tradition for parliamentarians to reconcile these public interests, just like they did in Afghan detainee—

Mr. Gilles Bisson: That's right.

Mr. David Phillips: —just like they did back in the Martel inquiry in 1991, where they brought in Justice Eleanore Cronk, who is still on the Ontario Court of Appeal, to deal with some of these very tricky legal issues. But for some reason, in this case, from May until October—and these records show it—there was no willingness to negotiate on the part of the opposition parties, and it was frustrating; I can say that.

Mr. Gilles Bisson: Did you have discussions with the Clerk or the Speaker in regard to trying to get them to intercede in some way and to some sort of way of releasing the documents that would be better, more to your keeping?

Mr. David Phillips: No.

Mr. Gilles Bisson: Why, then, do we—okay. Well, then in "General Approach," in the document dated September 19, there are a couple of passages here where you say, "We need to get the opposition House leaders in front of the Clerk and the Speaker—if we don't, the discussion will never get past rigid, positional negotiation by the opposition." That's on your September 19 memo. So it's clear that part of the advice that you gave—if you followed up on it, I don't know. You gave advice that, in fact, you have to get the Clerk and/or the Speaker involved in the negotiations on the release of the documents. Did you have those discussions?

Mr. David Phillips: I didn't have those discussions. If I was to speculate, not being able to recollect exactly what was informing that view, you'll recall that Speaker Levac sent a letter to all three House leaders a few days

after the ruling, offering to essentially facilitate the discussion between the three parties. It was my view that that was a constructive thing to do, largely because of the hostilities that were present between the three parties at the time, that the Clerk and the Speaker could potentially find a role in facilitating a solution, especially when the Speaker had said in his ruling that the reason that he suspended the ruling for that week was because he recognized these competing public interests and recognized an opportunity to get these documents out in a way that didn't torpedo these completely sensitive negotiations. It was in his ruling, and I thought that the Clerk and the Speaker could potentially play a role.

Mr. Gilles Bisson: My colleague has some questions.

Mr. Peter Tabuns: Thank you. Mr. Phillips, you wrote an email on October 1 to Laura Miller and David Livingston setting out the case for prorogation. You write, right at the beginning, "My ... rough views on prorogation ... I was [going to give them] more formally ... but thought I'd accelerate and shorten under the circumstances."

What were the circumstances that caused you to write this more quickly than you might otherwise have done?

Mr. David Phillips: I'm very glad that you asked that question. The circumstances are actually found, maybe cryptically, in the email, and those are the date and the time that the email was written. This email was written on October 1, 2012, at 7:43 p.m., and that was the evening of the day that the opposition made the decision to pursue contempt charges against Minister Bentley, in the immediate aftermath of some very unprecedented threats being made against his liberty, including incarceration and disbarment. What fundamentally influenced me drafting this email was that, if we reflected upon the previous 12 months of minority government in Ontario—

Mr. Peter Tabuns: That's all.

Mr. David Phillips: Okay.

Mr. Peter Tabuns: I understand the circumstances now. What you've outlined, though, in this recommendation is shutting down the Legislature, effectively so that you could stop the hearings from going forward and provide the Liberal Party with two and a half months of time to campaign around Ontario in anticipation that there would be an election in 2013.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Tabuns: This was effectively setting aside this investigation for your political advantage. What on earth were you thinking? How can you put that forward? These were significant matters. The Premier wasn't saying, "We're shutting things down so that I can campaign for the next while in anticipation of an election." We were told it was to cool things off. The reality is, you were making a very cold calculation that this inquiry had to be out of the way, the Premier had to be spared being brought before it, and you guys had to go around the province barnstorming in the event that there was an election in 2013. So why was the Premier telling us that this was about a cooling-off period, and not what you

were actually talking about: shutting down this inquiry and doing your campaigning?

Mr. David Phillips: Three things. First of all, I don't see the word "campaign" anywhere within the document. Second—

Mr. Peter Tabuns: Oh, really? Go on.

Mr. David Phillips: I don't see the word "campaign" in the document, but if you can find it—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the government side. Mr. Delaney? Madam Albanese?

Mrs. Laura Albanese: Thank you, Mr. Chair.

Thank you so much for being here today. I know you have detailed your involvement in your presentation at the beginning, but just to confirm: Following the 2011 election and up to the past February, you served as both director of legislative affairs and chief of staff to the government House leaders. Correct?

Mr. David Phillips: That's correct.

Mrs. Laura Albanese: And did you play any role in the decisions to relocate the two gas plants or in the negotiations that were taking place, or did you focus more on the legislative agenda, the committees and the negotiations with the opposition?

Mr. David Phillips: No. Prior to 2011, I was chief of staff at ministries that didn't have any involvement with energy policy, so I didn't have any involvement with respect to Oakville prior to the 2011 election. Thereafter, my job was exclusively focused on the Legislature, the House and its committees, so in that respect there was no involvement on my part with respect to the process of negotiating, no.

Mrs. Laura Albanese: You had a unique insight, I would say, from your position in the legislative environment during that period of time. I want to start by asking you about then-Minister Bentley's appearance at the estimates committee. We all know that on May 16, Mr. Leone moved a motion for correspondence from the Ministry of Energy and the OPA regarding the two gas plants. At that time, sensitive commercial negotiations were ongoing with both companies.

In response, Mr. Bentley wrote to the committee outlining that the motion was requesting documents subject to solicitor-client privilege and litigation privilege. He warned that these documents were highly commercially sensitive and cautioned the committee that their release would impact ongoing negotiations.

Can you speak to those issues raised by Mr. Bentley to the estimates committee at the time?

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Mr. David Phillips: Certainly. Maybe I'll do so by way of a story.

For those that were on the estimates committee process, and I think some folks here were, back in May 2012, you'll recall that the Minister of Energy, the Ministry of Energy, was given I think maybe 72 hours' notice before they were to start their appearance. So as you can imagine, there was a degree of scrambling on the

part of the ministry to get ready for the significant range of issues that could be discussed at the estimates committee.

There was certainly awareness on the part of the House leader's office and everybody that the gas plants were going to be the source of some discussion, and probably some contentious discussion, once the estimates committee came up. I believe it was the day before estimates, maybe two days before estimates, that there was a meeting that I was invited to at the very last minute just so that I could essentially have a sense as to the advice that was being provided to the minister, so that it could be passed on to government committee members for the purpose of the strategy that was being deployed.

I went to a meeting at the Ministry of Energy. I walked in about maybe a quarter to halfway through, and it was Minister Bentley receiving a briefing from a significant number of officials from the Ministry of Energy and counsel from the Ministry of the Attorney General. The meeting, I think, lasted for a good hour to an hour and a half. The entire meeting—and this was a major preparatory session for the minister going into the estimates committee—was him asking questions about solicitor-client privilege and him asking questions about these negotiations and what he could say and what he could not say.

The reason I say that is that it's a clear indication of the fact that the minister was very seized of his duty, going into the estimates committee process, of ensuring that he was fulfilling his responsibility, as a member of the executive council and as a member of the Law Society of Upper Canada and former Attorney General of Ontario, to protect the interests of the people of Ontario and of the Constitution at the same time as he was trying to find a way to respond and be accountable to the Legislature.

Mrs. Laura Albanese: Well, I guess I would say that these concerns were, even in your words, extremely founded, the fact that there were these competing interests that were being seriously considered. We have had a number of witnesses who have testified under oath at this committee about these very issues.

The former secretary of cabinet, Shelly Jamieson, had this to say about the potential release of confidential information: "It would have harmed the negotiations for sure. Nobody likes to ... have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves."

Deputy Minister Serge Imbrogno testified, "We were being sued by EIG for ... \$300 million," and if they were able to get information that would have made their case stronger, it would have "put us at risk there. Again, negotiating with Greenfield," if they could have used this information to get leverage in negotiations, it would have put us in a bad situation. "So, it's hard to quantify," but there were risks to the taxpayer.

When the Auditor General was here to testify, he acknowledged that similar issues arose when he testified in public accounts. He said he would be reluctant to put this type of information in the hands of the parties at that time. He also likened it to not wanting to tip your hand.

Do these expressions of concern mirror in some ways the concerns you yourself had or the minister had?

Mr. David Phillips: Certainly. I can speak from my own perspective and also on the basis of conversations that I would have had with the minister's office staff and from time to time with the minister.

With respect to the minister, yes, absolutely. I think that that was reflected in dozens upon dozens of pages of Hansard from his appearance before the estimates committee, that he was, throughout the exercise, explaining to the opposition and to other members of the committee the concerns with respect to solicitor-client privilege and not jeopardizing his negotiations.

From my standpoint, I obviously shared these views, and I think you have the records before you to show it. One of the documents here in the package that was provided by Mr. Tabuns and Mr. Bisson speaks about a memorandum that I prepared on July 11. This was a political document that I provided to some of my colleagues in the Premier's office. It set out a series of scenarios as to how things could play out at estimates committee the following week based on, for example, whether the Mississauga matter was going to settle or not settle. But most importantly, it's a political document, and the very first strategic objective that is set out in that document is reducing the risk, fiscal and otherwise, of the premature release of these records to ongoing litigation and proceedings. So even in the confidential political records, that is the very first strategic objective that's set out.

Mrs. Laura Albanese: The opposition has alleged that there was an attempt to keep these documents hidden forever, but from your emails and memos it was very clear that that wasn't the case. What's clear is that there were competing interests, as you had mentioned, between the committee's desire for information and the government's responsibility to protect the public interest.

In a memo dated July 4, 2012, you wrote that there was a fiscal risk posed by the production of documents until there was a successful resolution of litigation and other processes related to both gas plants. You laid out several options, depending on outcomes of these negotiations. In every one of these options, it was clear that the requested documents would be provided to the committee. In the words of Mr. Bentley at the time when he testified before this committee, it was not a matter of if, but a matter of when. Could you speak to that, please?

Mr. David Phillips: Yes. So with respect to that memorandum from the week before estimates was to come back on the 11th of July—the first thing, actually, just to back up, that I want to clarify is when I spoke about the fiscal risk and the sensitivities of these documents, that is all information that was provided to me through the Minister of Energy's office. It was purely on

the basis of the advice that was coming through the OPA and the ministry, I assume.

But with respect to that memorandum, that was a document that essentially—my job as an adviser in the House leader's office was to essentially take high-profile and contentious issues that were coming up to the Legislature and apply my understanding of parliamentary law and procedure, and try to kind of break it down for communications staff, issues management staff, policy staff, in terms of the different ways things could play out in the Legislature, based on a number of variables; in this case, for example, whether Mississauga was going to settle or not. That's what that memorandum was doing. It was setting out a series of options.

The most critical thing to note from that memorandum was what actually happened in response to that memorandum, and there are three things that happened over the course of the next few days. Once these options were put to the Minister of Energy and put to some folks in the Premier's office, I sent a subsequent memo to the Minister of Energy's staff for the Minister of Energy's consideration, and the recommendation that I provided was that the government pursue a negotiated solution with the Ontario PC and Ontario NDP caucuses and their staff. It would be a solution that would find a way to get these documents out, again, in a way that both reconciled these public interests and moved the contempt stuff off of the floor.

The next document in these emails shows that the minister obviously took that advice, because the very next day an email went to Ontario PC and Ontario NDP staff in which we're asking for a meeting and putting forward a hard proposal to reach a negotiated solution.

The third email shows, and this was from an email the very first thing on the morning of July 11, after late-night and early-morning meetings—it was me notifying my colleagues in the Premier's office and the Minister of Energy's office that the Ontario PC and Ontario NDP staff had indicated their caucuses had no interest in engaging in discussions.

So those documents, I think, show very clearly that there is a good-faith effort throughout, particularly once we got to that point where the matter started to settle, to get these records out.

Mrs. Laura Albanese: Thank you. We've had a number of neutral individuals that have testified to this committee and have recognized that there were serious risks associated with the release of information. Throughout his testimony to the estimates committee, Mr. Bentley reminded the opposition, I believe and I recall, countless times about the very real risks that existed on releasing commercially sensitive information during negotiations. At the same time, the opposition members of the committee were continuing to press for that type of sensitive information. He was put in a really difficult situation, wasn't he?

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Mr. David Phillips: He was, yes.

Mrs. Laura Albanese: You would agree to that.

Mr. David Phillips: Absolutely.

Mrs. Laura Albanese: The opposition has noted that there is language in records from you related to filibustering. It has been alleged that there was such a strategy employed to prevent them from ever receiving documents. I have read some of the transcripts, and it seems to me that the goal of our members in that committee was to make sure that all members on the committee were truly aware of the risks and to hopefully control the timing of disclosure such that the public interest was protected. Would that be a good interpretation?

Mr. David Phillips: Yes, I think that it's safe to say that, from my recollection, there were two stages of that estimates committee process. I think, if I remember, there were six or seven different amendments that were moved and debated, and then there were some subsequent issues with respect to subcommittee reports and things like that at the tail end. But at the first stage of the estimates committee process, you saw a series of amendments being moved by the government that were designed to essentially find that middle ground and to find a way to get these documents out in a way that protected the sanctity of these negotiations and allow for a process to protect solicitor-client privilege.

As we got to the tail end of the committee process, it became very clear that there was going to be no flexibility shown, at least through the debate and amendment process. There was certainly some sustained and prolonged debate that took place near the end, and that was accompanied by, as my records show, some discussions with staff for the purpose of trying to find a solution.

Mrs. Laura Albanese: I also want to speak to you a little about the Chair's ruling during those proceedings—not our Chair, but the Chair of the estimates committee. On a number of occasions, Mr. Prue, the estimates Chair, made comments such as the following:

"It would appear to me that Mr. Leone has the right to ask the question, but it is also abundantly clear to me that the minister can, as part of his answer, invoke his privilege as to what is happening in the lawsuit, and that can be his answer.... So I would caution Mr. Leone ... that the minister is well within the prerogative of his duties, if he feels it necessary to protect the government of Ontario's position, to simply state so, and the line of questioning may not have the results you are hoping for...."

Did that give you the sense that the Chair was validating the concerns that Mr. Bentley had raised?

Mr. David Phillips: The submissions that the government put forward in response to Mr. Leone's point of privilege clearly made the case that there was some reliance by the government on the statements that had been made by the Chair. In Mr. Prue's defence, I think it's probably safe to say that there was a fairly high degree of confusion and lack of clarity as to what exactly it was that he was saying. It was our view at the time—and there were multiple statements that were made, usually in response to the passage or defeat of amendments or the passage of motions—that we thought it took the form of a ruling by the Chair, and that that was some-

thing that was justifiably relied upon by the Minister of Energy. If that ruling was to be challenged somehow, it would have to go to the House through the usual process. Ultimately, the Speaker, in his decision on Mr. Leone's point of privilege, obviously didn't agree with that, but again, the statements were made.

Mrs. Laura Albanese: I remember that in response to Mr. Leone's document motion of May 16, 2012, Mr. Prue acknowledged the committee's right to ask for the documentation, but he also stated that the minister had the right to decline either giving that documentation or giving voice to that documentation during his answering of the questions. Mr. Prue said, "I would advise that I'm going to allow the motion to proceed, but I would also advise—and I think the minister, being a lawyer himself, knows full well that he may choose to answer the question in such a way as not to prejudice the province in any way, and I would expect him to do so."

Again, it must have seemed to you that the Chair was taking a similar approach to Mr. Bentley's in terms of attempting to balance the competing interests at play.

Mr. David Phillips: Right. Again, as I indicated in my previous answer, the submissions that the government provided in response to Mr. Leone's point of privilege clearly indicated that the Minister of Energy had relied on those statements, and in fact appeared in some respects to constitute a ruling that was binding on the committee. That was the view at the time. Obviously, that didn't play out in the decision.

One other point that I'd make is that the initial letter that Minister Bentley provided to the committee in response to the motion of May 16 from Mr. Leone indicated that he was relying on the Chair's ruling. So, at the very least, there was confusion and, I'd say, a lack of clarity about what exactly those statements meant, but I can certainly say, from our standpoint, that there was reliance by the government.

Mrs. Laura Albanese: So you must have been a bit surprised and disappointed, I guess, in terms of the course that things took after Mr. Bentley's appearance at the committee, and in terms of the matter being referred to the House?

Mr. David Phillips: Yes, first of all, in answer to your question, there was a high level of disappointment to the extent that we were going on precedent. As I said, it's the first minority Parliament we've had in a long time, but we were relying on, for example, what had happened in the Afghan detainee matter. We've got some very learned parliamentarians in this room who know most of the parliamentary texts, but you were very hard pressed to find a parliamentary text that doesn't identify the fact that while the Legislature has an absolute right to produce documents there is a tradition amongst parliamentarians to find ways to reconcile public interests that are raised, particularly when they are raised in respect to, for example, constitutional principles and the financial interests of the province.

So the frustrating aspect on our part was twofold. The first was through the estimates committee process and the

debate process, that there wasn't, in our view, a good-faith effort to find a way to reconcile that motion. Secondly, once this started to move toward the end of the estimates committee process and into the House, where both staff and then ultimately the House leaders were having discussions, the government was putting forward a series of solutions and were attempting to engage in good-faith negotiations to try to find a way forward without, for example, a contempt matter moving forward. And there was a degree of frustration that those discussions, for the most part, hit a brick wall.

Mrs. Laura Albanese: I know we only have a few seconds left, but why do you think the opposition refused to negotiate with you?

Mr. David Phillips: I'm very reluctant to speculate on that. I'm sure that they will give you their views. I can't speak for them.

Mrs. Laura Albanese: Thank you. Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Albanese.

To the PC side: Mr. Fedeli?

Mr. Victor Fedeli: Mr. Phillips, you outlined your Liberal career when you first started talking today. Can you tell me where you work today?

Mr. David Phillips: I work at the Alcohol and Gaming Commission of Ontario.

Mr. Victor Fedeli: Thank you.

You painted a very rosy picture in your opening statement. You talked about how the government's primary objective was to "facilitate the release of papers requested by the estimates committee." While that's a rosy picture, the emails that we have from you paint an entirely opposite picture, one of obfuscation and—well, you call it also the "opposition's unprecedented pursuit of contempt charges."

You do realize that it's unprecedented, yet the Speaker agreed? So it is unprecedented because you and your government were restricting documents that we were entitled to, followed by deletion and destruction of those documents. That is why it's unprecedented. You do acknowledge that it is unprecedented because of that but the Speaker did rule in our favour that it was a legitimate contempt charge here?

Mr. David Phillips: Is that a question?

Mr. Victor Fedeli: Yes, do you acknowledge that?

Mr. David Phillips: I acknowledge that the matter is unprecedented, but for reasons that are completely different from the reasons you suggest.

Mr. Victor Fedeli: Well, the Speaker ruled along with the reasons that we suggest.

You talk about this rosy picture of facilitating the release. I'm just going to pick up where Mr. Bisson finished off on his document 7. You wrote a very detailed report on July 4 to Laura Miller, John Brodhead, Neala Barton, Wendy McCann and Kevin Spafford. This is a very, very detailed plan. It's headed up "Summary of Options, Standing Committee on Estimates—Gas Plants Motion."

Mr. David Phillips: Yes.

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Mr. Victor Fedeli: And your guiding principles—although you suggest it's co-operation, the guiding principles you wrote here are, "We do have the ability to manage the manner and timing of the release." Your strategic goals were to successfully manage the timing and manner of release of the documents so as to limit negative communications—manage the issues, basically, the issues management impact on the government. Also in your strategic goals is trying to get the minister through his last five hours and avoid having the matter come before the House for a debate.

To me, that doesn't jibe with your opening statement, where you were interested in this glowing release of documents. How do you square that?

Mr. David Phillips: I appreciate the question. What I would say is that you just cited the guiding principles and the strategic goals that influenced this entire extensive memorandum, which, I agree, is very formal and detailed.

Mr. Victor Fedeli: Let me just interject with a quick question. Would you suggest that that's a transitory document, then, or is this a legitimate document?

Mr. David Phillips: I would suggest that this is a substantive document.

Mr. Victor Fedeli: I'm sorry?

Mr. David Phillips: It's a substantive document.

Mr. Victor Fedeli: Okay, thank you.

Mr. David Phillips: My view of a non-transitory document is substantive—

Mr. Victor Fedeli: Yes, I appreciate that. Thank you. Thank you very much, actually.

Mr. David Phillips: But back to your question, you skipped over the first guiding principle and you skipped over the first strategic objective—

Mr. Victor Fedeli: I'm more interested in those ones that talk about how you're going to manage the timing. We've got an issue with that.

Mr. David Phillips: Okay. As I said in my opening statement, my job and the way that I pursued my job every day was to try to find that sweet spot between good parliamentary law and procedure, good public policy and good politics. You see three strategic goals set out here, and I would say that number one is public policy focused, number two is politically focused, and number three is focused on parliamentary law and procedure and getting the estimates committee process moving. I think that is perfectly appropriate, to have political considerations in a document of this nature.

Mr. Victor Fedeli: We learned from the Information and Privacy Commissioner that government emails, documents, are retained for one year on a backup disk before they're overwritten and no longer exist. That's something we've learned in the past months and confirmed today in the privacy commissioner's addendum, which came out just this morning.

The estimates committee was requesting gas plant documents on Mississauga eight months after the decision was made to cancel it. Were you delaying to try to

get in that sweet spot—let four more months go by of delay so that they can be deleted and we'd never see them? Was that your motivation?

Mr. David Phillips: Sir, you have 1,900 pages of my records, going from January of last year to the time of my departure from Queen's Park, and they are political records in many cases; in some cases they are public records, clips and transcripts and things like that. Not a single record suggests, let alone any intention, but any awareness of the fact that this one-year rule—

Mr. Victor Fedeli: So that timing would have been coincidental, that after four more months of delays we never would have seen these emails.

Mr. David Phillips: I would suggest your question is conspiratorial in nature.

Mr. Victor Fedeli: There's a lot of conspiracy here, and you're absolutely right it's conspiratorial.

That email that you sent on the 4th of July to Laura Miller, John Brodhead, Neala Barton, Wendy McCann and Kevin Spafford: You suggested that it's not a transitory document, that it's a responsive document. Many of those people were asked under freedom of information if they had any responsive gas plant documents, and several of them responded, "No responsive documents," yet you have one here. It's in that sweet spot. Again, it's July 4, 2012. Would you have any idea why they did not turn those documents over?

Mr. David Phillips: No, sir. I can't—

Mr. Victor Fedeli: Did you turn this particular document over to the FOI request?

Mr. David Phillips: No, sir, I didn't.

Mr. Victor Fedeli: Why not?

Mr. David Phillips: To cut short, there were three FOI requests that I recall.

Mr. Victor Fedeli: Yes, there were.

Mr. David Phillips: You're probably familiar with the three FOI requests. I had responsive records to one of them; two of them were extremely narrow and I didn't have any responsive records with respect to—

Mr. Victor Fedeli: The one you responded to was very specific about a ministerial briefing note.

Mr. David Phillips: That's right, and there was another one that was asking for Project Vapour and Project Vapour-lock, I believe. Then the third FOI request that I think you're probably talking about was referring to the cancellation/relocation thing—I'm sorry—

Mr. Victor Fedeli: In 2010, 2011, 2012—

Mr. David Phillips: That's right. I don't have—

Mr. Victor Fedeli: It wasn't quite as broad.

Mr. David Phillips: That's right. The bottom line is that my—and I think that I produced about 50 pages of records; most of them were clips and things like that. To be very clear, I sought advice on the parameters, with the civil service and experts, on what the parameters of these FOIs were; you've actually got the email showing me asking for advice on this, and—

Mr. Victor Fedeli: So who told you, then, not to? Who did you seek that advice from?

Mr. David Phillips: Nobody. It was entirely my decision.

Mr. Victor Fedeli: And who did you seek that advice from, specifically?

Mr. David Phillips: I can't remember who I talked to in the FOI office in Cabinet Office. I'm not sure exactly—

Mr. Victor Fedeli: And so, out of the thousand—

Mr. David Phillips: —but just to be clear—

Mr. Victor Fedeli: Yes, please.

Mr. David Phillips: —my involvement, as I've said from the start, was with respect to the legislative aspect of this matter. This FOI was very clearly, in my view, written to deal with the cancellation, the relocation, people who were involved in that aspect of it. There were certainly lots of people who were involved in that; my job was with respect to the legislative aspect of this.

Mr. Victor Fedeli: So even though this has “gas plant” written all over it, several pages, it's discussing what to do about the gas plant documents and whatnot—

Mr. David Phillips: Well, the FOI, for example, didn't ask for a document with the phrase “gas plant” in it. It asked for documents having to do with the relocation, cancellation, tendering and things like that—the actual process of tendering. That was my interpretation.

Mr. Victor Fedeli: So emails from or to you that say “Vapour/Vapour-lock,” you didn't turn over because it didn't say “Project Vapour”?

Mr. David Phillips: I actually think it's in the package. I'm sorry; there was a lot, and I went through them in as much detail as I could, but there was an email that actually said, “Here are your search terms: Project Vapour; Project Vapour-lock.” I would have plugged that into my Outlook, and nothing came up.

Mr. Victor Fedeli: So because it said “Vapour,” you didn't turn it over.

Mr. David Phillips: That's correct. Oh, no; sorry, I shouldn't say that. The search terms that I put in were “Project Vapour” and “Project Vapour-lock,” and nothing would have come up. It wasn't a consequence of me saying, “That's not going in.”

Mr. Victor Fedeli: Yes, because the word “Project” wasn't in front of the word “Vapour.”

Mr. David Phillips: No, because I put in the search terms that I was told to put in. I do notice, Mr. Fedeli, that later on, your motions and your FOIs actually expanded the search terms that you wanted searched.

Mr. Victor Fedeli: Yes, because we kept getting stymied by people who were not turning over the documents. They were just a little bit cute by half. Just—

Mr. David Phillips: Words matter. I'll just say that.

Mr. Victor Fedeli: I can appreciate the fact that words matter. Do you know what else matters? Prices matter; \$585 million to the taxpayer and the ratepayer matters an awful lot.

So let's cut to some of these words. You didn't like when Mr. Bisson said “stymied.” You didn't like that word “stymied,” so let's use your own words. This is an email from you on June 13, 2012; it's gas plant scandal

document 1: “Our members brilliantly filibustered estimates committee for 3.5 hours ... with no fanfare....” So “filibustered” is a better word than “stymied,” but do they mean the same thing?

Mr. David Phillips: Absolutely not.

Mr. Victor Fedeli: They don't?

Mr. David Phillips: No, sir.

Mr. Victor Fedeli: Okay.

Mr. David Phillips: Your question, again, was, do “filibustered” and “stymied” mean the same thing?

Mr. Victor Fedeli: Yes.

Mr. David Phillips: I think that they're separate words in the dictionary, and I suspect that if you were to do a thesaurus, they don't mean the same thing.

Mr. Victor Fedeli: Oh, that's right; I forgot: Words matter. So, you're proud—you're boasting—about how you “brilliantly filibustered” the estimates committee; delayed them, stalled them, kicked it around for another three and a half hours. We were stymied. I was in that room for many of those hearings, and we did not get any answers, which is likely why we're here more than anything.

You were involved in this whole gas plant scandal from the beginning. I understand you didn't cancel the gas plant—you were eloquent with the words you chose in your opening statement—but why were you so determined to filibuster the estimates committee? What was the reason?

Mr. David Phillips: In response to one of the government questions, I indicated there were really two stages of that estimates committee process. In the early stages, we were moving a series of amendments that were attempting to find a way to modify the motion in a way that reconciled these two competing public interests.

Mr. Victor Fedeli: You know, I was here in many of these estimates committee meetings. Mr. Leone finally brought the question about how much the cancellation of Mississauga and how much the cancellation of Oakville cost, and when we couldn't get the documents a year or so later, we're here. In these emails, you boast about the “filibustering.” Was it the Premier's office that directed you to instruct the backbenchers to obstruct our committee's work? I remember it was now-Minister Zimmer that put on quite a show that day. Was it you? Was it the Premier's office that directed you to direct them to stall this?

Mr. David Phillips: It was a coordinated effort on the part of the government, through the deployment of a legislative strategy as well as a negotiation strategy with the opposition parties, to find a way to reconcile these two competing public interests.

Mr. Victor Fedeli: So I'll go back to a question that Mr. Bisson asked: Who ordered you to obstruct the work of the committee?

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Mr. David Phillips: I don't understand the question, to the extent that I never received any order to obstruct anything.

Mr. Victor Fedeli: Was it your choice, then, to filibuster the committee and stop us from getting to the truth? It was your choice?

Mr. David Phillips: No, it was the strategic objective of the government throughout this exercise—

Mr. Victor Fedeli: And who? Who, specifically? Was it David Livingston? Was it Don Guy? Who?

Mr. David Phillips: It's very safe to say that everybody was on the same page.

Mr. Victor Fedeli: Everybody? You called a question from me earlier “conspiratorial,” now you're telling me everybody—this involved everybody in the Liberal government?

Mr. David Phillips: No. The folks that were involved with the legislative aspect of this process: You had, I believe, three, maybe four, government caucus members who were involved; you had the Minister of Energy's office who reported to the ministry; you had me, who reported to the government House leader—

Mr. Victor Fedeli: And they're all in cahoots with this filibuster?

Mr. David Phillips: Again, the language is just not the correct language to use. This was an—

Mr. Victor Fedeli: The language was “filibuster.” It's your own word. You're proud of it. You're boasting about it.

Mr. David Phillips: So at the same time as you've got, again, 1,900 pages—

Interjection.

Mr. David Phillips: Just to be clear.

Mr. Victor Fedeli: Yes.

Mr. David Phillips: At the same time, you see—at the exact same time as this is taking place—there are overtures being made by the government to both of your staffs and, through them, to your caucuses, to find a way to reconcile these competing interests to facilitate a way for these documents to come out. That is the clearest evidence you can possibly have. These are from my emails, political records to show that we are trying to find a way to get these documents out and, as further evidence, the records did come out the very day that Mississauga was settled. The very day that Mississauga was settled, they came out.

Mr. Victor Fedeli: Not quite. You missed 20,000, but we'll get around to that later.

You wrote an email on September 21, and you say here, “If Levac”—referring to the Speaker—“does anything other than find that we've cured the breach and suspend the ruling indefinitely, I think we should need to take some reasonably extreme action in the House.” What did you mean by that?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, before I allow that question to proceed, would you give me a moment?

Mr. Victor Fedeli: Yes; I'm not referring to the Liberal operatives who are intimidating the Speaker.

The Chair (Mr. Shafiq Qaadri): Fine. Please ask your question, and we'll determine after.

Mr. Victor Fedeli: I'm asking you: What did you mean by that?

Mr. David Phillips: Sorry, I'm just looking through the email. Where's this—

Mr. Victor Fedeli: Document 2, last sentence, just above where it says “Dave.”

Mr. David Phillips: In the final paragraph?

Mr. Victor Fedeli: Yes. “If Levac does anything other than find that we've cured the breach and suspend the ruling indefinitely”—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I've been advised by my colleagues here that that question is out of the scope and will not be allowed. Mr. Phillips, you—

Mr. Victor Fedeli: But this is a September 21 email.

The Chair (Mr. Shafiq Qaadri): Let me just confirm that, Mr. Fedeli.

Mr. Victor Fedeli: I'm reading it, September 21, 2012. What's wrong with that date? This isn't one where they're trying to get to the Speaker like the last guys.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. I appreciate this is now getting into a level of precision which is difficult to juggle, but as I understand it and on the advice I'm receiving from my counsel here, that question is out of the scope of this committee.

Interjections.

Mr. Gilles Bisson: But Chair—

Mr. Victor Fedeli: Look, let me say, Chair, that—

Interjection.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson has a point of order.

Mr. Gilles Bisson: To the point: How do you figure that that question can't be asked? It's his email in regard to what he did to try to stymie the release of the documents.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson—

Mr. Gilles Bisson: So what is your logic?

Mr. Victor Fedeli: Will you stop the clock, Chair?

The Chair (Mr. Shafiq Qaadri): Yes.

Thank you, Mr. Fedeli, for allowing us to confer. Mr. Bisson, the ruling stands as I've just said.

Mr. Gilles Bisson: But what's the logic?

Mr. Victor Fedeli: Before you start the clock, would you please explain that?

Interjections.

The Chair (Mr. Shafiq Qaadri): Colleagues, I am being showered with lots of legalese, which I may or may not understand given some more caffeine, but in any case, the ruling stands, as I have said, and—

Mr. Gilles Bisson: On a point of order.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson.

Mr. Gilles Bisson: The fact that you don't understand what the rules are shouldn't give you the authority just to disallow a question. You're saying yourself you don't understand why it is the clerks are telling you this, and now you're saying, “Because I don't understand, he can't ask the question.” Come on. You've got to do better than that, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson.

Colleagues, as I've said, there's now getting into a level of juggling and consideration of these points. I'm advised by my legal counsel, by my Clerk, by other table officers who are represented here. I have made this ruling. I believe we are on firm foundation. I have directed you that if you have—

Mr. John Yakabuski: You don't even know the foundation.

Mr. Gilles Bisson: You just admitted you don't know the foundation of the decision.

Interjections.

Mr. John Yakabuski: Explain what part of the question is out of order.

The Chair (Mr. Shafiq Qaadri): The Speaker's finding of a prima facie breach of privilege that forms part of our mandate, and not the process by which that ruling was determined.

Interjections.

The Chair (Mr. Shafiq Qaadri): Gentlemen, thank you.

Mr. Yakabuski?

Mr. John Yakabuski: Explain to us what part of Mr. Fedeli's question is out of order.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. You are welcome to pursue this elsewhere.

The time, if you are ready, Mr. Fedeli, now begins.

Mr. Victor Fedeli: I don't agree with that, Chair, but I am going to rephrase.

What extreme action in the Legislature, in the House, would you have taken?

Mr. David Phillips: So this was drafted on September 21, which is, if I recall correctly, in and around the time that the matter was before the House, the contempt matter was before the House. Is that right? So the important thing to note is that when we came back—

Mr. Victor Fedeli: You wanted "extreme action" in the House. What did you mean by that?

Mr. David Phillips: The important thing to note is that when we came back, the Speaker rose and made a "statement," I think is the proper term. Mr. Leone was entitled to move his referral motion, and the government engaged in sustained debate, so that's what took place.

In terms of what that language means when I say "extreme action," there's any range of, I guess, procedural tools that could be deployed, but the important thing is that nothing actually did take place in response to that.

Mr. Rob Leone: It's a filibuster.

Mr. David Phillips: No. During the debate on your motion? I don't think there was anything of that nature.

Mr. Victor Fedeli: Well, look, this is very disconcerting today. I must say, Chair, this is very upsetting, that our line of questioning has been stymied yet again today. I have to say that. We'll have to change direction here on a simple request about their extreme action.

This tells us there are more people involved in the cover-up than we originally thought. You can call it a conspiracy again or whatever your terminology was—

you like words—but you're deep in this as well. It appears as if you're a central player in this as well, and we can't ask you the questions to fully outline the role that you play in the cover-up and the obstruction. It's going to be very difficult now to continue.

Mr. Rob Leone: Hold on a second. Point of order.

Mr. Victor Fedeli: This is awful.

The Chair (Mr. Shafiq Qaadri): Just before you—the time is stopped.

Interjections.

The Chair (Mr. Shafiq Qaadri): Colleagues, I'm informed that you are able to ask the witness what his role was in the cancellation, but not with reference to the Speaker. Correct?

Interjection.

The Chair (Mr. Shafiq Qaadri): The process of the Speaker—of the Speaker's ruling.

Mr. Leone.

Mr. Rob Leone: Perhaps it would be helpful if we had a three-minute recess so we can get an answer to why these questions are out of order.

The Chair (Mr. Shafiq Qaadri): No, I think—I'm not going to recess. I think the ruling has been made. I appreciate the—

Mr. Rob Leone: I just want an answer.

The Chair (Mr. Shafiq Qaadri): Everyone is seeking the logic chain. I appreciate that. But it stands as it stands.

Mr. John Yakabuski: There is no logic chain.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson. The clock is stopped. You have two minutes—

Mr. Gilles Bisson: So Mr. Fedeli is allowed to ask his question as it relates to Mr. Phillips, and I thought that's what he was doing. So maybe he can retry the question and direct it directly to the—

The Chair (Mr. Shafiq Qaadri): You may retry, and we will listen attentively.

Mrs. Albanese.

Mrs. Laura Albanese: I think—

Mr. Gilles Bisson: No, my point is, he was asking a question as to his role, not as to the motivation of what the Speaker was doing. I thank you for your clarification, and we will continue with the questions—

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The Chair (Mr. Shafiq Qaadri): We'll welcome the question.

Yes, Madam Albanese.

Mrs. Laura Albanese: Mr. Chair, I guess we're all looking for some clarity, because the email was clearly written before the Speaker's ruling. Therefore, it should be within the mandate of the committee. It was written before. Just some clarity on that would be appreciated by all the members.

The Chair (Mr. Shafiq Qaadri): I appreciate that. We've tried to be as clear as possible. I appreciate that there may be questions arising that test those boundaries, and I can only simply say that we allow the questions at least to be posed. Whether they are in order or not will be

determined as they are posed because I don't think we can give a blanket summary, all right?

Mr. Fedeli, are you ready to begin? You have about two minutes left.

Mr. Victor Fedeli: Well, I'll have to try to think of how we can word this—

The Chair (Mr. Shafiq Qaadri): Fine. Time begins.

Mr. Victor Fedeli: Thank you. In your September 21 email to Laura Miller and David Livingston, you're trying to game out how this plays out procedurally: "The Speaker suspended the 'remedy' part of the breach finding in order to allow the House leaders to work.... By releasing the documents ... one would"—I'm trying to think of what I can ask here without hearing from you. I'm going to repeat my question. "If Levac does anything other than find that we've cured the breach and suspend the ruling indefinitely, I think we should need to take some reasonably extreme action in the House." Was some of that action instructing Don Guy and Dave Gene to "get to" the Speaker? Is that part of what this was? Is that the extreme action?

Mr. David Phillips: No, sir.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, apparently all of your question, except the last five or six words, was in order.

Mr. Victor Fedeli: Was your extreme action to try to get the Speaker to change his ruling?

Mr. David Phillips: Sir, there is—

The Chair (Mr. Shafiq Qaadri): That's out of order, Mr. Fedeli.

Mr. Victor Fedeli: Was your extreme action to order the deletion and destruction of emails so that we don't get to understand the Speaker's ruling?

Mr. David Phillips: No.

Mr. Victor Fedeli: I'm sorry?

Mr. David Phillips: No, sir.

Mr. Victor Fedeli: Did you delete any of your email?

Mr. David Phillips: You've got 1,900 pages of my email in front of you.

Mr. Gilles Bisson: Only 900 pages?

Mr. Victor Fedeli: It's 1,900.

Mr. Gilles Bisson: I've had more than that in one day.

Mr. Victor Fedeli: I'm stymied here on how to ask about this if you're going to cut me off at every turn. How much time, Chair?

The Chair (Mr. Shafiq Qaadri): Three seconds. Thank you, Mr. Fedeli.

Once again, before I pass the floor to the NDP, I appreciate the challenges by committee members, but I act on advice from legal counsel, from our table officers, following procedure. As I say, if there are issues with that, there are other forums in which to deal with that, I say to you all with respect.

Mr. Bisson.

Mr. Gilles Bisson: Welcome back.

Mr. David Phillips: Thank you, sir.

Mr. Gilles Bisson: It's pretty clear that the Liberal caucus, the Liberal House leader's office, my office as House leader of the NDP and the House leader's office

for the Conservatives—when it came to the issue of solicitor-client privilege, pretty well everybody came to the same conclusion than you. Who did you confer with in order to determine that you can hide behind solicitor-client privilege in not releasing the documents? Did the Clerk give you that advice?

Mr. David Phillips: No, sir.

Mr. Gilles Bisson: Who gave you that advice, then? If it wasn't the Clerk, was it just—

Mr. David Phillips: I don't have a copy of it with me here today. I wouldn't be surprised if many of you have an opportunity to read it, but Justice Iacobucci, who was brought in to lead up the Afghan detainee panel—in his report, he has two chapters. One deals with national security privilege and one deals with solicitor-client—

Mr. Gilles Bisson: But even in the case of the Afghan detainee issue, national security did not trump the right of the committee to be able to get the documents it had requested. So I ask you again, who gave you the advice to utilize solicitor-client privilege as a reason to not release those documents?

Mr. David Phillips: If you read the Afghan detainee panel report, the second chapter deals—

Mr. Gilles Bisson: So you came up with that advice.

Mr. David Phillips: If you read the second chapter of the Afghan detainee report—

Mr. Gilles Bisson: No, but I've only got 10 minutes, so I'm getting to the point. You looked at the Milliken decision and you came out of it with a strategy to use solicitor-client privilege as a way not to release those documents. So it was your advice to government that precipitated that.

Mr. David Phillips: I certainly conferred with others, in Cabinet Office, for example, and relied on advice from the Ministry of Energy that, in fact, these documents were solicitor-client privileged, was basing it on a lot of precedent out there that solicitor-client privilege is, first of all, a constitutional principle that, especially when it comes—

Mr. Gilles Bisson: No, but listen. It's pretty clear: The Speaker made a decision; our Speaker was clear—Speaker Milliken was clear and made a decision—that there is a responsibility on the part of the government to release those documents when asked by the committee to do so.

I ask you because I know we conferred at the time, and I'm sure that the Conservative House leader's office did the same. We looked at the precedents, we talked to our federal counterparts, we looked and spoke with the Clerks, and all of them came to the same conclusion: that you cannot use solicitor-client privilege as a way to not release the documents. Clearly, the government was trying not to release documents for a reason, which I'll get to later.

I've got to conclude, if you didn't get that information from anybody, essentially, you're the one who gave that advice to the government.

Mr. David Phillips: With respect to both Speaker Milliken and Speaker Levac's rulings, in both cases, they

said that there's an absolute right to the production of these documents, but—

Mr. Gilles Bisson: That's right.

Mr. David Phillips: —but that there are competing public interests, and in both cases suspended the rulings and asked the parties to get together to find a way to reconcile those interests.

Mr. Gilles Bisson: But the Speaker's decision was clear: That could not trump the right of the committee. So don't you have—

Mr. David Phillips: And in the case of the Afghan detainee matter, all parties came up with a panel. Justice Iacobucci headed it, and solicitor-client-privileged documents were not released in almost every case.

Mr. Gilles Bisson: Would you agree that you had a responsibility, as the government, to do the right thing? It was your responsibility?

Mr. David Phillips: Absolutely, and that includes protecting the Constitution.

Mr. Gilles Bisson: I go to the document that you gave to the Premier's office back in July. In there, you talk about strategic goals. You say, "Successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues management impact on the government." It's pretty clear that what you were trying to do was to manage the bad news. Isn't that what you were trying to do?

Mr. David Phillips: I'm just pulling up—sorry, which document number is it?

Mr. Gilles Bisson: That's your strategic document dated—

Mr. David Phillips: It's the first document, correct?

Mr. Gilles Bisson: Yes—July 4, on the second page. You say, "reduce the risk—fiscal and otherwise"—which you've already talked to. The second bullet point at the end of "Strategic Goals":

"—Successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues."

You were trying to do damage control: Yes or no?

Mr. David Phillips: The strategic goals that I set out are:

"—To the extent possible, reduce the risk—fiscal and otherwise—posed by the production of documents to the successful resolution of litigation and other processes related to both the Mississauga and Oakville plants;

"—Successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues management impact on the government;" and

"—Facilitate the Minister of Energy's completion of his final five hours before the committee and avoid having the matter come before the House for a debate/vote."

Mr. Gilles Bisson: So there are two things that happened. You tried, by your own admission in this document, to time the information coming out in such a way that it was less harmful to the government; and you were

trying to avoid this matter coming before the House at all.

Mr. David Phillips: No, sir.

Mr. Gilles Bisson: This was all about damage control—

Mr. David Phillips: No, sir.

Mr. Gilles Bisson: —and that's what prorogation was about as well.

Mr. David Phillips: No, sir.

Mr. Gilles Bisson: The prorogation was about trying to duck out from your responsibility as a government to do what you were charged to do, and that was to release those documents when they were requested. So at the end of the day, it was about your political interests—the prorogation, the whole bit. It was about the political interests of the Liberal Party and not about your responsibility to do the right thing—what you're required to do as a government.

Mr. David Phillips: Mr. Bisson, I don't agree with your characterization, and—

Mr. Gilles Bisson: Well, it's your own words.

Mr. David Phillips: I don't agree with your characterization, and here's why—

Mr. Gilles Bisson: What is "manage the timing and manner of release of the documents"? What does that mean, "manage the timing and manner of release"?

Mr. David Phillips: I don't agree with your characterization, and here's why: The very day after this memorandum was written, I drafted a memorandum to the Minister of Energy's office, and they proposed a recommendation to the minister that we contact your offices and the Ontario PC offices for the purpose of negotiating a solution.

Mr. Gilles Bisson: And we had said no.

Mr. David Phillips: Those negotiations took place—

Mr. Gilles Bisson: That's right, and we had said no.

Mr. David Phillips: —and on the day of the Mississauga settlement, we had a meeting in the morning, in which case your staff said, "We have no interest in negotiating. We have no interest to reconcile in the public interest that you've raised."

Mr. Gilles Bisson: You had a responsibility, sir. Your government had a responsibility to release those documents, as per the law, and it's pretty clear, as you look at this, that your strategic goal was to manage the communications on this thing and, if need be, try to find some way not to have the matter come before the House. It's pretty clear that what you were trying to do was to stymie the release of the documents.

Mr. David Phillips: The Minister of Energy had multiple obligations throughout this period of time, and—

Mr. Gilles Bisson: It looks to me like you were handling the file pretty well at that point.

Mr. David Phillips: Sir, again, I've got the record right here, in which—

Mr. Gilles Bisson: Well, I have the record right here.

Okay, so you were not trying to manage the release of the information in a way that was favourable to the Liberal government.

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Mr. David Phillips: This document sets out public policy, political and parliamentary law and procedural considerations. Does the Premier's office have a communications and issues management department that tries to effectively manage contentious issues? Absolutely. I think that's perfectly appropriate for political considerations—

Mr. Gilles Bisson: I agree, yes. I understand what you're saying but it's clear what the government did. At the very beginning, you tried to do every procedural tactic you could at committee not to allow the motion to come before the House. Why?

Mr. David Phillips: That's not true.

Mr. Gilles Bisson: Well, I was there. I was the third party House leader and you guys were doing everything you can to move amendments to motions, not to allow the motion of Mr. Leone to come before the House.

Mr. David Phillips: We were doing everything—

Mr. Gilles Bisson: Did you or did you not try to filibuster that committee by amendments?

Mr. David Phillips: We were doing everything we possibly could to negotiate a solution—

Mr. Gilles Bisson: You weren't trying to negotiate anything; I was there.

Mr. David Phillips: It's in the record, sir.

Mr. Gilles Bisson: And when you failed and the Speaker found that there was a prima facie case of contempt, then your next trick was, "Well, I guess we're stuck. I guess we're going to have to do something. Oh, let's prorogue the House; maybe we can get around this whole little mess by ducking."

So you guys never had the intent of taking your responsibility to do what was your obligation under law.

Mr. David Phillips: No, throughout this period of time, sir—

Mr. Gilles Bisson: Oh, you try, Peter. Maybe you can get him to say something.

Mr. Peter Tabuns: Why, thank you, Gilles.

Mr. Gilles Bisson: I miss you. I miss you, by the way, Dave.

Mr. Peter Tabuns: I'm just following on what Mr. Bisson had to say. I mean, it's very clear from—

Mr. David Phillips: You weren't like this in House leaders' meetings.

Mr. Peter Tabuns: —the email that we were discussing earlier today. When you were making your recommendations to David Livingston and Laura Miller, you were pretty clear: "We have a chance there'll be an election in the spring of next year. We don't want committee hearings; we want our people out on the road. We don't want to have the Premier to have to go before this committee to answer questions." You were doing everything in your power to ensure that the interests of the Liberal Party were protected, and frankly, that this got swept aside.

Mr. David Phillips: There were two fundamental considerations that were influencing the views that I expressed in this particular memo. Number one—and again,

because of the date, this was the day that the opposition made the decision to pursue unprecedented contempt charges against the Minister of Energy—it was my view—

Mr. Gilles Bisson: It was also unprecedented that you didn't release the documents when it was asked. That was pretty unprecedented, too.

Mr. Peter Tabuns: In fact, you don't mention that in this. You talk about the need to make sure that Yasir Naqvi gets to go out and be a parliamentary assistant and president of the Liberal Party and do on the road what he needs to do, instead of having him stuck in committee. You don't talk about Chris Bentley; you talk about the Premier not having to go to committee. That is your focus. It is, "How are we going to deal with the next two-and-a-half or three months before a possible budget election?" And that's to make sure that you're outside this building campaigning. That's what this is about. How can you characterize it any other way?

Mr. David Phillips: There are two things I'd like to say about that particular document, if you'll indulge me for just a minute, and I promise not to go on too long. Number one, that was a memo that I prepared on that evening in an unsolicited fashion to two colleagues in the Premier's office and thereafter didn't have any further discussion about the memo and was not involved in any discussions that then took place on October 15.

Secondly, if I could, the fundamental considerations that went into those documents dealt with the public policy, political and parliamentary law and procedural aspects of this—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the government side: Madam Albanese.

Mrs. Laura Albanese: I want to go back to the estimates motion and the risk to taxpayers. Over the past six months, I would say the opposition has suggested that they actually would have been quite willing to engage in a compromise solution, but you've been saying today that they weren't. They were not willing to negotiate with you. So which is the case? Did you want to finish your thoughts?

Mr. David Phillips: I can speak from my personal experience, which was that throughout the estimates committee process, which I think went over about eight or nine days, there was a good-faith effort on the part of the government, through debate and amendment, which is perfectly appropriate, to find a way to modify this motion so as to facilitate the release of the records that were being requested by the opposition parties, but to do so in a way that recognized and reconciled the duties and the obligations that the Minister of Energy had: to protect the financial interests of the people of Ontario and to protect the constitutional principle of solicitor-client privilege. As I said to you earlier on, I was in a meeting the day before where that was very clearly a fundamental pre-occupation. It was based on advice that he was receiving from counsel and public officials within the Ministry of the Attorney General and the Ministry of Energy.

Thereafter, once it became very clear that it was going to be difficult to achieve a compromise solution with the opposition parties, we took a number of steps to attempt to propose, proactively and in an unsolicited fashion, negotiated solutions with the opposition parties. The first took place just prior to the Mississauga settlement and the return of the estimates committee on the 11th of July, in which there are a number of emails in my package that show that we were trying to negotiate a solution with the opposition parties. Then, after the Speaker issued his ruling, we put forward two proposals, one that mirrored the Afghan detainee process, for the purpose of trying to find a way to reconcile these two very important public interests, but unfortunately we didn't get anywhere.

Mrs. Laura Albanese: So instead of negotiating and working out a solution, what we saw was the opposition launching a full-scale attack, really, against Mr. Bentley. The Legislature was ground to a halt. We heard insults and threats to the honourable minister. There was talk about getting him disbarred, thrown in jail, ruining his life and his career—

Mr. John Yakabuski: Point of order, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, on a point of order.

Mrs. Laura Albanese: Could you stop the clock, please, Mr. Chair?

Mr. John Yakabuski: I object vociferously to the allegations being made by Ms. Albanese. At no time was Minister Bentley threatened. She's implying that the opposition threatened him in the Legislature. That is an accusation against members of the Legislature. That is not acceptable.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. I'll simply, with your direction, just ask all members to please refrain from accusing other members if such was done.

Please, Ms. Albanese, please continue.

Mrs. Laura Albanese: Thank you, Mr. Chair. When former Minister Bentley appeared before this committee, he testified, "I think it would be fair to say that this past year has been one of the most difficult I could ever imagine." He went on to say, "The sacrifices that families make in public life are enormous, far beyond what most people would even begin to think, but the sacrifice and effect that family has had over the past year has been incredible. I'm sorry that I put them through that by effectively doing what I always wanted to do, which was serve the people."

My question to you is, knowing what you know about the former minister, do you believe that he would have put himself and his family through what he did if he didn't truly believe that he was acting in the public interest?

Mr. David Phillips: I could spend all day talking about Chris Bentley. I first worked for him—actually on his campaign for his first election—in 2003 when I was in law school at Western, and then I worked for him for 18 months. I was actually a summer student at the Min-

istry of Labour with him between my first and second year of law school.

But I can tell you that the most significant and impactful years for me were when I worked for him at the Ministry of the Attorney General. I can tell you through that period of time, by the way that he approached his job, that he is not a person who does anything without the highest concern for principle and ethics and the right thing to do.

Throughout this period of time, I had more than a few conversations with his staff and with him directly about the procedural aspects of this matter, and I can tell you first-hand that Minister Bentley was extremely seized of these competing public interests and trying to find a way forward, and relied on those in the House leader's office, to a certain extent, to provide options with respect to the procedural aspects of the estimates committee, and then, once this matter entered into the House. I can say that throughout that period of time that the information that was being delivered to us through the minister's office was that Minister Bentley was very concerned with ensuring that he was meeting both of these objectives, both as a member of the Legislature and as a member of cabinet.

Mrs. Laura Albanese: Thank you. I'm going to pass it over to my colleague Mr. Delaney.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney?

Mr. Bob Delaney: Thank you very much. I'd like to follow up from a question you were asked by our colleagues in the NDP, where it seems that you were repeatedly cut off. The Iacobucci panel clearly articulated the importance of solicitor-client privilege. The panel sent back to members a list that set out those documents where the claim of privilege was well founded. What precedent do you think they set when it came to documents subject to solicitor-client privilege?

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Mr. David Phillips: I would actually say that "precedent" may not be the right word, because the Afghan detainee panel was the product of an agreement amongst parliamentarians in which they applied, I would say, perhaps political self-restraint in some respects to come up with a way to reconcile these very important public interests with respect to solicitor-client privilege and national security privilege and set up a process whereby they would rely on experts, including a former Supreme Court of Canada justice, to provide advice on these two very important principles that have been set over and over again through traditional precedent, and take the form of constitutional principles—and particularly where you are a lawyer who is a member of a law society, you have a duty to uphold it at every turn.

Again, I wouldn't necessarily say that it serves as a precedent. It serves as very strong guidance from a very recent case that has a lot of parallels to this matter as to how you can set up a process to reconcile those interests. What's most notable, I'd say—and the committee has the record, which was the proposals that we put to the opposition party shortly after the Speaker issued his

ruling and suspended it, which very closely mirrored the approach that was agreed to by all parties except for, I think, one in the House of Commons during the Afghan detainee matter.

Mr. Bob Delaney: Okay. In a transition planning memo from January of this year, 2013, you had described in detail that the fall 2011 and the spring 2012 sessions have been mired by endless stall tactics. Again, the words that you use: “The official opposition have exhibited a clear political strategy to delay and stall the government’s legislative agenda as much as possible. Since the 2011 general election, it has taken an average of 52 sessional days to pass a government bill, 35 sessional days longer than the average bill during Bill Davis’s second minority government. The official opposition dragged out debate on straightforward, relatively non-contentious legislation.”

Based on all of this, it seems that you had a real concern about the opposition’s willingness to make this minority Legislature work. You were asked about these—

Interjections.

The Chair (Mr. Shafiq Qadri): Stop, please. Mr. Yakabuski has the floor. Point of order, hopefully—

Mr. John Yakabuski: What relevance to the mandate of the committee does this question have? I’d like the Clerk to rule on that.

The Chair (Mr. Shafiq Qadri): Thank you. It’s the Chair that rules, and as far as I can tell, it has not breached the mandate.

Mr. Delaney.

Mr. Gilles Bisson: Point of order.

The Chair (Mr. Shafiq Qadri): Mr. Bisson.

Mr. Gilles Bisson: I would suggest that Mr. Delaney remembers that it was the government and former Premier McGuinty’s idea of the “major minority” that caused this mess in the first place.

The Chair (Mr. Shafiq Qadri): I’m not sure what sort of point that is, Mr. Bisson, but thank you.

Mr. Gilles Bisson: I just thought I was going to help him with his question.

The Chair (Mr. Shafiq Qadri): Mr. Delaney, please continue.

Mr. Bob Delaney: Whatever point it is, it isn’t a point of order.

What you did set out was the two months of a bell-ringing and, let’s say it, filibustering campaign by the opposition here. You noted that nine government bills were passed, only following significant obstruction delay by the Ontario PCs or as a result of the government bringing sufficient public pressure to bear on the opposition parties. So you had a real concern about the opposition’s willingness to make this minority Legislature work. Would you like to expand on it?

Mr. David Phillips: The document that I think—I don’t have it in front of me, but I certainly remember drafting it. Once we got into the fall legislative session and the House ground to a halt to deal with the contempt matter regarding Minister Bentley, during that period of time we started to do an assessment as to how the Legis-

lature had been working and what the prospects were for the Legislature work in moving forward.

The analysis that we produced was obviously incorporated into that document, which showed that relative to previous Parliaments, going way back through Bill Davis minority Parliaments, for example, the number of bills that were passing through the Legislature, but most importantly, the amount of time that every single government bill was spending at debate and before committee, was unprecedented and extraordinary. The consequence of that was that there was government legislation that was for the most part just simply not moving, and much of this was non-controversial and non-contentious legislation.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney.

Just before I offer the floor to Mr. Fedeli of the PC side, I would just comment for committee members that being relevant or irrelevant is one issue and being out of order or in order are separate issues.

In any case, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. I’ll pass the microphone to Mr. Leone.

Mr. Rob Leone: All right. Thanks for the clarification, Chair; I’m glad you cleared that up for us.

I’m going to go back to the email that Mr. Fedeli was trying to get an answer from you about. It states the following: “If Levac does anything other than find that we’ve cured the breach and suspend the ruling indefinitely, I think we should need to take some reasonably extreme action in the House.”

Mr. David Phillips: Right.

Mr. Rob Leone: What were the extreme actions that you were prepared to take?

Mr. David Phillips: First of all, I sent that email and, as you can see from my records, I didn’t follow up with any sort of specifics as to what that meant. If I was to speculate on what I was talking about at that time—you see in the previous sentence in that paragraph that there was an extremely high level of concern and dissatisfaction across the government caucus, as you heard throughout the debate, about the fact that we were trying to negotiate in good faith and find a way to get these documents out and that we were hitting a brick wall.

The Speaker was hamstrung in that he had no choice but to allow you to move the motion of contempt. At the time we saw that as a particularly vindictive, callous and inappropriate use of the Legislature. In terms of the steps that we are going to take—you are very learned in parliamentary procedure—I didn’t populate it, and there was no action taken on it, but it can range from a whole range of different activities in the House that have been deployed over the years.

Mr. Rob Leone: Earlier, you blamed Mr. Bentley for not releasing the documents; you suggested that that was his decision to make, and obviously, he had lots of considerations to make. But I would suggest that—Mr. Fedeli used the word “cahoots,” and you used the word “co-operation” or “collaboration”; whatever the terminol-

ogy is—there was a coordinated effort to not release any information with respect to these gas plants.

On March 7, in public accounts, the Liberals on that committee filibustered Ms. Gélinas's motion to get the Auditor General to look into the gas plant situation. On May 16, in the estimates committee, we started to ask for the production of documents once answers weren't forthcoming. We had to subsequently receive the letters, as was stated earlier today. We went into those motions, and certainly through June and July, we were significantly filibustered.

You have an email from June 13, I guess it's gas plant scandal document number 1, that says, "Our members brilliantly filibustered estimates committee for 3.5 hours yesterday with no fanfare." You continued, throughout the whole process, to not release the documents as stated. You gave active consideration to—if I could provide some of the extreme measures you were prepared to take, which were legal action against the opposition.

You wanted to have a reference case to the Supreme Court to allow us to stop this process from going on. You hoped that you would win the September 6 by-election so that you could reconstitute committees, so that we could engage in this investigation; obviously, that failed. You tried very hard to argue against the motion that we put forward to refer this issue back to committee.

You guys were prepared to go at length. I remember, very distinctly, your government House leader being very disappointed that we actually invoked closure on that to actually get the committees struck. When that happened—after that motion was put forward—guess what? The prorogation of the Legislature took place, further enabling the government to push back the examination of this very issue.

This is a coordinated effort. These are the sorts of extreme measures that you were prepared to take—as the mastermind, because these are the documents that you've prepared—to not allow us to ask very legitimate questions about this gas plant scandal.

I'm perplexed by this, because we're not allowed to ask questions about the intimidation of the Speaker, yet we have all of these bits and pieces of evidence emerging from the documents that you've produced that basically say, "I don't want the opposition to question us on our politically motivated decisions to spend hundreds of millions of dollars of taxpayer money to save some Liberal seats." In essence, that's what your job was throughout this whole process. What do you say to that?

Mr. David Phillips: I would say that I adamantly disagree with your characterization of the documents that you have in front of you. Specifically, the documents that you have in front of you show, from the very start—in particular, there is a series of emails—

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Mr. John Yakabuski: Not in estimates committee.

Mr. David Phillips: You have a series of emails that show a series of attempts by the government to reach a negotiated solution with the opposition. It's very close to what happened in the Afghan detainee—

Mr. Rob Leone: I read the documents, Mr. Phillips, and in the documents you clearly outlined the fact that the opposition probably wouldn't accept these ideas for various reasons, and for good reason, because at the end of the day, the only interest that we have is the truth. We asked the question in estimates. You probably were here. I know you filtered in and out of estimates committee when we were sitting. I wanted to know exactly what these cancellations cost and where in the budget they were located. That's the question that we still actually don't have an answer to more than a year later.

At the end of the day, you have a coordinated effort to block the opposition from getting an answer to that question. That's actually what prompted all of this. This isn't about, in your words, being mean-spirited and vindictive. This is about getting the truth for the people of Ontario, which you still refuse—well, you're no longer a staffer in this administration, but I realize you have a nice appointment with the Alcohol and Gaming Commission of Ontario.

This is just what speaks to everything that has happened and transpired since and before and after your departure. This is exactly what has happened. You've done everything to make sure that the truth has not and will not be known.

Mr. David Phillips: As I indicated before, the very first motion that we moved in the estimates committee was attempting to get the opposition to agree to just slightly modify the motion for the purpose of recognizing these two provincial public interests. Then you've got an email from me in mid-July setting out a series of options for when the committee comes back on the 11th, in which I identify that the very first strategic objective is to reduce the risk to these ongoing negotiations that would result from premature release of these documents. Then you see, in October, two proposals that we provided to the opposition parties, one of which very closely mirrored the Afghan detainees and where we would have a facilitated release of these records in a way that reconciled these two interests. You have a very clear continuum of records from May until October 2012 in which we're going after the same thing from start to finish, and that is to—in government, you've sometimes got competing interests. In this case, the minister had a competing interest of the accountability of the Legislature that he held as an MPP and a minister and his responsibility as a member of the executive council to protect the financial interests of the province through these negotiations.

Mr. Rob Leone: This story and the story that your documents portray go on to the final conclusion, which is part of the Information and Privacy Commissioner's addendum, where she says, "I am left with the inescapable conclusion that they did not take my investigation very seriously. For example, MGS staff did not inform my office about the following essential pieces of information: (1) the existence and the application of the Symantec Enterprise Vault as part of the OPS Enterprise email system; (2) the existence of approximately 30,000 undeleted or 'orphaned' vault accounts"—this is all on page 17.

This goes on to suggest that you deleted emails to try to cover up your evidence. Through the whole investigation we're actually trying to get to the bottom of things. At the end of the day, you did everything to stop that information flow. That was essentially what the task of the Liberal staffers was: to withhold the information from the people of this committee and the people of Ontario, by extension.

Mr. David Phillips: I can only speak from my standpoint, of course, and I would just refer you back to the documentary evidence that you have in front of you. Throughout, I am having discussions about what we're trying to get at here through this process. At no point in time does it speak to what you suggest; for example, concealment and things like that. We're talking about protecting the interests of the people of Ontario.

Mr. Rob Leone: Again, this is the Information and Privacy Commissioner's addendum to the report released I think today, in fact, on August 20, 2013, which then suggests, on page 17, "The provision of inaccurate and incomplete information in my initial investigation is unprecedented during my tenure as commissioner. As a direct consequence of MGS's incomplete response, the public has been misled as to the nature of the OPS Enterprise email system and the ability of MGS staff to retrieve potentially relevant information. We ... know that relevant email records were indeed retrievable through these systems."

Again, Mr. Chair, I would suggest, in closing, that if anything speaks to the ongoing cover-up that we see in this committee, it was released in the addendum report today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Leone, and thanks to you, Mr. Phillips, for your presence and testimony. Committee will recess until 1:30.

The committee recessed from 1225 to 1333.

DR. ALAN LEVY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting to order and invite our next presenter to please come forward. Dr. Alan Levy, please come forward and be seated. Thank you, Dr. Levy. I understand you're being sworn in.

The Clerk of the Committee (Ms. Tamara Pomanski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Dr. Alan Levy: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Levy. You have five minutes in which to make your opening address, beginning now.

Dr. Alan Levy: My opening address is really just a little about me, because I've been directly involved in this subject matter. I started my career as a research scientist in England. Then in 1973, there was the OPEC oil crisis, and the British government recruited PhDs to work on energy efficiency in buildings. I did that for a

few years, and then I emigrated to Canada and set up a research facility in Ottawa at the National Research Council on energy efficiency in buildings.

Since then, I've been involved primarily in the private sector, both starting and running companies. The companies that I started and ran were mostly owned by electric and gas utilities, and generally in the area of energy efficiency in buildings, but also into procurement of natural gas and electricity and some small cogeneration activities.

So the last, I guess, 30 years, I've been consulting. I consult to companies across North America, Australia and Japan in energy efficiency, buildings, utilities. I've consulted to governments in Canada on policies and programs related to energy. But the last 10 years I've been primarily involved in the private sector and assisting them, again, in the general area on the demand and consumption side of energy use.

The Chair (Mr. Shafiq Qaadri): Thank you for your opening remarks.

To our government side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair.

Good afternoon, Dr. Levy. It's really good to have you here today. I'm sure, given your background, that perhaps the challenge for both me and Mr. Tabuns will be to avoid getting into the minutiae, because we both happen to enjoy that sort of thing.

As you may know, part of the mandate of the committee is going to be to provide recommendations on how we can improve the siting process for large-scale energy projects. We've invited you here today because, as you've pointed out, you've had a very long career working in the energy sector, and your reputation does precede you.

Would you like to expand a little bit more about your career in the energy sector, particularly any experience you may have regarding building and creating companies in the fields of energy and natural gas procurement?

Dr. Alan Levy: Well, in energy and natural gas procurement, you always got into that peripherally, really, when deregulation happened in natural gas, and then subsequently in electricity. If you were dealing with any client on energy efficiency, ultimately the cost of either gas or electricity is price multiplied by use, and so the price part, one got involved with.

I got involved more directly when electricity deregulation was happening. I was a CEO of a company called ENERconnect, which was, at that time, owned by 220 municipal utilities in Ontario. As deregulation was unfolding, our job, we thought, was to buy electricity for the whole province, for the utilities. As it turned out, that's not how the market unfolded. So then we got into settlement services, providing that to the local distribution companies.

Then another company I started and ran was called The Power Connection. That was owned by six large electric local distribution companies. There, just as electricity deregulation happened, we were—by the way, all these companies were non-regulated companies. That

company was primarily assisting the private and the public sector to procure electricity, primarily, just as deregulation happened.

Mr. Bob Delaney: In your consulting business, what type of clients and businesses do you advise, and what does the scale and scope of your services provide?

Dr. Alan Levy: It really is more to the management side of businesses as it relates to energy and use, so companies such as, for example, IKEA Canada, who have two mandates globally. One is to reduce their energy use, each over successive three- or five-year programs, and to ultimately be 100% renewable electricity. So I'm helping the Canadian company achieve those two goals.

I've consulted with the World Bank in setting up what we call performance contracting. I don't know if that's a term the committee is familiar with, but that's where a private company puts up the money to retrofit a building and gets paid out of the energy savings. I have over 50 clients.

Mr. Bob Delaney: You were also one of the founders of the Ontario Energy Association.

Dr. Alan Levy: That's correct, yes.

Mr. Bob Delaney: What's the current role of the Ontario Energy Association?

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Dr. Alan Levy: I'm a member of the Ontario Energy Association. I think its current role is to represent broadly the various stakeholders involved in energy and, on their behalf, lobby and advise the Ontario government as to policy and programs.

Mr. Bob Delaney: The various stakeholders would, I assume, represent a fair number of electricity generating companies?

Dr. Alan Levy: Yes.

Mr. Bob Delaney: Okay. Any names we might recognize?

Dr. Alan Levy: You're testing my memory of the membership, but I know a number of the local distribution companies are involved. I'm not sure if the OPA—

Mr. Bob Delaney: That's fine. I kind of get the idea.

So over the years since you've been in Canada, you've accumulated a fair amount of knowledge about provincial energy issues in Ontario. Could you describe what the energy system might have looked like in the past, say around the time you came and in that first decade you were here? How would you describe the energy system in this province at that time?

Dr. Alan Levy: Well, I think Ontario was always noted to have extremely reliable both gas and electricity systems. In fact, I had a company I was running which was a subsidiary of then-Consumers Gas, which is now Enbridge. Their advice was sought all over the world for building gas distribution systems—all over the world. They had a consulting company doing that.

Sorry, was your question about electricity or gas as well?

Mr. Bob Delaney: Well, let's try it a different way. How does today, in terms of electricity supply and trans-

mission, compare with the landscape as you saw it in the first decade you were here?

Dr. Alan Levy: Okay, I think one of the larger changes is the breakup of the old Ontario Hydro monopoly; along with fewer local distribution companies—I think there were 200 to 300 when I arrived in 1977; no more coal generation; much more renewable; a greater focus on and contribution of conservation and demand management than when I arrived. Of course, the big change was deregulation of electricity and natural gas.

Mr. Bob Delaney: To some extent, the type of future that many of the advocates were urging upon Ontario back at the time that you arrived?

Dr. Alan Levy: Jeez—

Mr. Bob Delaney: I guess I'm thinking particularly about some of the testimony given in that era in the Royal Commission on Electric Power Planning.

Dr. Alan Levy: I haven't looked at that for a long time, but I did participate in that at the time. My vague recollection is there was oscillation between planning for greater demand and then less demand, and views changed as the forecast changed. That's to my vague recollection.

Mr. Bob Delaney: Yes. Bruce Campbell, from the Independent Electricity System Operator, testified before the committee last week. We asked him at that time about the changes in the energy system over the past several years. He talked about the effect that phasing out coal has had on Ontario. He explained that coal is being replaced by investments in natural gas generating plants, in wind and in solar.

As he described it, and I'll use his words, "What we've been doing is putting in place the tools and learning to operate a very differently configured system, one that we can operate just as reliably but one that is very differently configured from what had been the practice for many years—and very low-carbon." Could you perhaps expand on that based on your experience? How has the system had to adapt as a result of the phase-out of coal? What challenges and, most importantly, opportunities have been created from new sources of electricity supply?

Dr. Alan Levy: You're stimulating my memory now. I think the big change was from very centrally planned, large generating plants when I came here, to smaller, because we got into gas-fired generation and diversified. I think there's a certain amount of—you know, the 10-year anniversary of the August blackout—benefit to having a diversified supply instead of relying on very large generators, both from a cost point of view and a risk to the public purse in building very large.

There's been a shift, I guess, in also shifting some of the burden from government, through deregulation, to the private sector, placing some of the risk on them to build generating facilities, but it's brought challenges, because you have to balance the grid. The renewable generation, the more distributed generation, has brought its own challenges in terms of managing the transmission system, balancing the grid and so forth.

Mr. Bob Delaney: You might be aware that our Ministry of Energy is currently consulting with Ontarians on the long-term energy plan. To date, my understanding is that there have been more than 2,000 responses received. Have you participated at all in the consultations?

Dr. Alan Levy: I've read the document, and I've still got time, I think, till September, to submit my comments, which I will.

Mr. Bob Delaney: Yes, in fact, you do. I do hope you put some of your thoughts in writing, because I think we'd like to have them.

Do you think that having a diverse mix—which, by the way, would include conservation planning—is important for the future of our system, and would you expand on that a little bit?

Dr. Alan Levy: I think it's very, very important. I think we have the technology nowadays to manage a diverse supply of generation. It seems to make a lot of sense from an energy security point of view to have a diversified supply of energy, both geographically and in terms of the source.

When I reflect on that, I often think, "We always focus on price." I know when I read the media, it's all about the price of electricity. We haven't yet monetized reliability and we haven't really monetized the environmental effects. I think that's myopic, just to focus on price, because if you haven't got it, you'd pay anything to get it.

Mr. Bob Delaney: All you have to do is go abroad to realize the value that people put upon reliability—in Ontario, the concept of having to have a backup generator just doesn't compute; people don't need to do it, and they've never perceived the need to do it—and, as well, to judge the quality of the air in our cities by comparison with that of metropolises of a similar size.

Through these committee hearings, one of the things we've learned a lot about is current energy infrastructure siting and the process by which we arrive at it. At the moment, as you know, it's led by the Ontario Power Authority. Are you familiar at all with the process?

Dr. Alan Levy: Somewhat. I've never been directly involved.

Mr. Bob Delaney: Well, earlier this spring, Minister Chiarelli wrote to the OPA and to the Independent Electricity System Operator, asking for their recommendations to improve the process. Bruce Campbell from IESO, as I earlier mentioned, was here testifying last week, and he said that they've had 18 meetings all across Ontario. Have you had a chance to read the OPA's and IESO's report at all?

Dr. Alan Levy: No, I haven't.

Mr. Bob Delaney: Okay. When we talked to Mr. Campbell about the major themes that he heard during the course of the consultation, one of the things he said was, "[P]eople wanted" us "to be involved early in the planning for these facilities, that they saw the planning and moving into the siting of facilities as things that should not be separate but, in fact, ought to be quite integrated." In the course of our consideration here,

we've heard much the same feedback from residents of the Oakville and Mississauga communities who came in to offer their testimony. As an example, one lady, Daniela Morawetz from Oakville, told us, "I don't want to be reading that some other community is going through this sort of thing.... It's a gruelling thing to go through; it's a very emotional thing"—"thing" referring to a siting process. She and other witnesses from the affected communities said that there should have been a better consultation process with the residents of Mississauga and Oakville from the very beginning, and as a Mississauga MPP, I'm very much on that page.

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There's a constant theme in the OPA's and the IESO's reports and recommendations, and their recommendations begin, really, with saying that we need to strengthen the processes for early and sustained engagement between local government and the public. Another recommendation would be to provide local governments and communities a greater voice and say in the planning and siting of energy infrastructure.

That's kind of a lead-up. Based on your experience, what role can engaging with the local communities play to better support the siting of energy infrastructure in Ontario?

Dr. Alan Levy: My reflection on that is that, in general, the public hasn't had the opportunity to be well-versed in the whole energy situation. My sense is that it lands on you, as a general person in the public, and then you have to rush around getting up a steep learning curve—because it is a complicated industry—so you're coming at it from a fear basis, not a knowledge basis. I feel that as a society, how we can do that another way is not just to educate ourselves on conservation, which I think is important, but on supply. Most people have no idea how they get their electricity or how they get their gas—not a clue; least of all, they can't understand their bill. It's very difficult to understand your electricity or even your gas bill.

I think collectively, we've got a huge job to do there so that, over the coming decades, when there are serious decisions to be made—particularly if you're going to have a decentralized power supply system, where it is going to be sited near you, whatever it is—we would all benefit by having a decision or emotions less based on fear and more on fact.

Mr. Bob Delaney: Okay. I'd like to actually go down that road a little bit with you. If I say the words "setback" or "buffer zone," we both know what we're talking about?

Interjection.

Mr. Bob Delaney: Okay. In terms of perception and fear, talk to me a little bit about setbacks or buffer zones with regard to energy infrastructure, because it's been one of the things that, in recent years, the province has had to devote some thought to. I think some of the first solid codification of it came out with the renewable energy act, and was only applied after the fact to more traditional forms of power generation where, on reflec-

tion, we realized that there were no hard and fast criteria. Could you talk about that a little bit?

Dr. Alan Levy: Well, I'm not an expert in that—from a wind or a generation point of view, what is appropriate; but I think as a business person, and then as a citizen, I'd look at the risk. Who should bear the risk?

I noticed that in some of the procurement, it was laid onto the private sector. "If you're going to choose a site to build a gas plant, private sector, it's kind of your job." But I've noticed in the years—I've spent most of my working life here in the energy industry—it always comes back to the government. You can talk about nuclear, you can talk about anything; it always lands back at some level of government.

I would start looking at this issue in terms of who bears the risk and who most appropriately should carry the risk. I go back to my other comments: We need to explain that, what we know, what we don't know. I started off as a scientist, which means I know nothing. I know a little bit, and I try to explain things in concepts I know, but I know nothing. That's why I'm a scientist, originally, because I'm humbly acknowledging that. Otherwise, I wouldn't be doing research.

I say that as kind of a philosophical point because nothing is certain. To the best of our knowledge, you, whoever is in power, have to make a decision with the best knowledge you have at that time. You've got to lay that out: "Here are our uncertainties. Here's who is best to absorb the risks with those uncertainties." I think that if you start from that point of view, you can have fewer mistakes, and any corrections we have to make would be based on knowledge.

Mr. Bob Delaney: Okay. Chair, I'm going to stop there.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Welcome, Doctor.

Dr. Alan Levy: Thank you.

Mr. Victor Fedeli: When former minister Dwight Duncan sat in that very chair at estimates committee, he told us that you can't convert a coal plant to natural gas. Would you have any knowledge of the conversion of a coal plant to natural gas?

Dr. Alan Levy: I have no expertise in that area.

Mr. Victor Fedeli: Okay.

Dr. Alan Levy: I mean, through my general reading, I understand you can. It's a question of cost and so forth. But I'm not an expert in that area.

Mr. Victor Fedeli: Okay. It was just, sort of, funny that shortly after that, the Liberal government had made an announcement about the conversion of the coal plant to natural gas in Thunder Bay. I just found it a bit contradictory, and I was looking for some clarity from you on that.

Were you involved in the cancellation of the gas plant in Mississauga or Oakville?

Dr. Alan Levy: No, I wasn't.

Mr. Victor Fedeli: These are questions I ask almost every witness, so, please. Do you have any knowledge about the costs for the cancellation of Mississauga or Oakville?

Dr. Alan Levy: Only from what I've read in the media and so forth, yes.

Mr. Victor Fedeli: So do you know how much it cost to cancel the gas plant in Mississauga?

Dr. Alan Levy: The Mississauga one was—several hundred million dollars, I think it was.

Mr. Victor Fedeli: Do you know how much it cost to cancel the gas plant in Oakville?

Dr. Alan Levy: I know it was more; north of \$600 million, I think. I've seen numbers. But again, I'm quoting from media.

Mr. Victor Fedeli: Were you involved in any way, shape or form with the cover-up of documents from Mississauga or Oakville?

Dr. Alan Levy: No.

Mr. Victor Fedeli: Okay. Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Dr. Levy, thanks for coming today. I know you've got a long history in the energy file: CAESCO, Rose Technology. I was a bit puzzled when you were put on the witness list today.

In the course of the work done by the provincial government, after the cancellation of the Oakville or Mississauga plants, were you ever asked, as a consultant, to assist in analysis of options for the provincial government?

Dr. Alan Levy: No.

Mr. Peter Tabuns: So you've done no consulting on these matters?

Dr. Alan Levy: No.

Mr. Peter Tabuns: You've already made it clear that you're not a person who can give us information on the cost of those cancellations or the cover-up of documents.

Dr. Alan Levy: I'm not that person.

Mr. Peter Tabuns: Then I don't have any questions for you today, but I appreciate your coming here.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

Mr. Bob Delaney: I'd just like to explore some of your thoughts. We talked earlier on consultation with local communities. There's been some suggestion that, on a regional basis, consultation might include elected officials, elected aboriginal/First Nations, economic development officers, community business representatives. Would you have any thought on talking about siting from the vantage point of consulting regionally or with specific groups within regions?

Dr. Alan Levy: I really don't have any expertise in that area.

Mr. Bob Delaney: Fine, fair enough.

Looking at some of the things that we've heard here today, one of the concerns raised throughout the consul-

tation process—this is something you may be able to comment on—might be a disconnect between provincial planning and local planning. In the scope of your consulting activities, do you have any thoughts on better linking electricity planning and municipal planning?

Dr. Alan Levy: My exposure to that is really on a project basis, and really one looks to the professionals—the qualified engineers—to do their due diligence to make sure that all appropriate permits are obtained and inspections afterwards. But that's the extent of my exposure to that.

Mr. Bob Delaney: Okay, fair enough.

From the consultation sessions, one of the discussion points was the need for better education among Ontarians, something I think you touched on earlier when you talked about the fact that most people really don't know where their electricity comes from or how.

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I was discussing with a group of municipal officials just recently the fact that, over the decades, the computer industry has done a better job of explaining what a gigabyte of storage space is than, in the past century, the electricity system has done in teaching people what a kilowatt hour of electricity is; what its value is and what it does. Thinking along with that, do you have any thoughts you might share on the need for better education among Ontarians for our province's electricity needs and a better understanding of the planning and the siting process?

Dr. Alan Levy: Well, again, you've asked me questions about what's changed since when I came here.

Mr. Bob Delaney: Yes.

Dr. Alan Levy: So our reliance on electricity is exponential compared to when I arrived. That's nothing to do with Canada or me arriving; it's to do with how technology has changed. I would think one has to say—in fact, a former President of the United States said this—that one of the critical security issues facing an industrialized country is their electricity supply system. Forget economics; just security.

I think we underestimate that. I don't think we talk about that. It should start at the schools. It's as important as clean water. It's one of the most important things in any civilized society.

I think if you raise the importance of reliable, inexpensive supply to where it should be in any society, then there will be less rhetoric about electricity prices and so forth and a realization that it's a necessity. We have to value it carefully. We have to plan for it carefully.

Then I think there's a context for all those consultations that you mentioned between different levels because I don't think we're all starting from the same point.

Mr. Bob Delaney: Okay. I think as a metric to measure one of the things that you've said about us being a more electrically intensive society would be to simply count the number of electrical outlets in a house today by comparison with what there were in a house in the era when you and I probably grew up. Would you have any

thoughts on how we could better educate the public and any ideas on how—as you say, it normally lands back in government—government might roll that out?

Dr. Alan Levy: Well, I'd like to see something more done in schools, in the school system. There have been various programs I've seen with children. I think the Toronto District School Board was going to—I don't know if they're still doing it—put solar voltaic on the roofs of their schools, and then there was going to be a program to educate the kids about it. But again, it's not done in a context of what electricity is, how important it is.

I think a great place to start would be the schools, because children embarrass their parents when they come home and ask questions that parents can't answer.

Mr. Bob Delaney: There's an element of education in which each new generation also educates their parents.

I would like to just thank you very much for taking the time to come in here today. I'm sure I speak on behalf of all of my colleagues when I tell you that, as a committee, we appreciate that you've taken some time out of your busy schedule to come in and to share some insight, to answer some open-ended questions and to provide us with some additional food for thought, particularly around the siting and approvals process for energy infrastructure.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney.

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Again, Dr. Levy, I must say I quite enjoyed reading your CV today, and I congratulate you on a wonderful career and your knowledge in the industry. I thank you for being here.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Fedeli.

To the NDP side: Mr. Tabuns.

Mr. Peter Tabuns: No questions, Mr. Chair. Thanks to Dr. Levy.

The Chair (Mr. Shafiq Qadri): Thanks to you, Dr. Levy, for your presence.

I understand we have a motion before the floor.

Fine. We have two motions: Mr. Fedeli and Mr. Tabuns. You're up first, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. I move—

Interjections.

The Chair (Mr. Shafiq Qadri): Just a moment.

Mr. Victor Fedeli: I move that the Standing Committee on Justice Policy request from the Ministry of Energy, Minister of Energy and the Ontario Power Authority all documentation and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent, received or generated between January 1, 2012, and August 20, 2013; that search terms include any and all proxy names or code names including but not limited to Project Vapor, Project Vapour, Project Vapor Lock, Project Vapour Lock, Oakville project, Mississauga project, Oakville gas plant, Mississauga gas plant, TransCanada, TCE, Project Apple, Project Banana, Project Fruit Salad, that the documents be provided to the committee no later than

September 10, 2013; and, that the documents be provided in an electronic, searchable PDF.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. We've received your motion, and I am advised by my colleagues that we will reserve our ruling as to whether it is admissible, in order or not.

Mr. Victor Fedeli: Excuse me, Chair? Point of order. Why?

The Chair (Mr. Shafiq Qaadri): We need to consult procedural authorities to see whether we will entertain this motion formally.

Mr. Victor Fedeli: So this is something we're doing at this moment, though? Not next week?

The Chair (Mr. Shafiq Qaadri): No. The judgment, or the ruling, will be put forward next week.

Mr. Victor Fedeli: Really? It's almost identical to the original motion that got this started except the date is different. There's virtually nothing different in it. This is an extension of the motion that started this committee.

The Chair (Mr. Shafiq Qaadri): Thank you. While true, my comment stands.

Mr. Victor Fedeli: Well, hang on a second. I don't understand that. I genuinely don't understand you, Chair.

The Chair (Mr. Shafiq Qaadri): All right. Thank you. We'll—

Mr. Victor Fedeli: No, no. Seriously. Hang on a second, please. Please, Chair. Please consult for a moment here, because this has just gone one step too far.

Interjections.

Mr. Victor Fedeli: No, I understand. I want this started now. It's identical to the original motion.

Mr. Bob Delaney: It's not.

Mr. Victor Fedeli: Well, then, let's recess.

The Chair (Mr. Shafiq Qaadri): I am advised, Mr. Fedeli, that I am to accept receipt of this. I am to reserve judgment as to whether it is in order, whether it is admissible—

Mr. Victor Fedeli: Seriously?

The Chair (Mr. Shafiq Qaadri): The intention of my colleagues here at the table is that we will reply to you next week. We're welcome to—

Mr. Victor Fedeli: No. Hang on. One moment, Chair. Point of order here.

The Chair (Mr. Shafiq Qaadri): Just a moment. We are welcome to recess today. We may not get back to you today with reference to this discussion.

Mr. Victor Fedeli: Well, in your deliberation, I would remind both the Chair and the Clerks that this motion has been passed several times. All we're changing is the date here for looking for additional documentation. What, quite frankly, on earth can be so complicated about this one document, other than it may be indeed the one where we finally get to the truth?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. I appreciate your concern and your protest and your suggestions, but what I've said stands.

Mr. John Yakabuski: Could I?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Yakabuski.

Mr. John Yakabuski: Is the issue in question the date, the timing? Did the original motion restrict us to a date?

The Chair (Mr. Shafiq Qaadri): I think, Mr. Yakabuski, before I start answering, or attempting to answer, those questions piecemeal, that is entirely the issue that we're attempting to reserve and get further judgment on.

Mr. Victor Fedeli: Well, may I add one more?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Victor Fedeli: When we do come back next week with your answer, I'm not going to change the date at the end. We'll just leave the ministry one less week to collect our information, because this is information we deserve and that we're going to demand on that date.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Are there any further comments?

Mr. Gilles Bisson: No, I'm going to stay out of this one.

The Chair (Mr. Shafiq Qaadri): All right. Thank you.

So that motion, as I've said, has been received. Its ruling—in order, out of order, admissible, inadmissible—is forthcoming next week.

There is a further motion? Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Chair.

I move that the Standing Committee on Justice Policy direct the office of the government House leader to produce any and all identified paper and electronic files and records related to the Oakville and Mississauga gas plants and the May 16, 2012, motion moved by the member for Cambridge at the Standing Committee on Estimates calling for the production of documents related to the Oakville and Mississauga gas plants, including but not limited to correspondence, briefing notes, emails, PIN messages, BBM messages, SMS messages, memoranda, issue or House book notes, opinions and submissions, and including any drafts of or attachments to those records. Mr. Chair, I'm going to add and that the documents be provided in an electronic, searchable PDF.

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The Chair (Mr. Shafiq Qaadri): All right, Mr. Tabuns. I am advised once again by the collective wisdom of the table, that we are in receipt of your motion but, again, whether it is admissible or inadmissible, in order or out of order—the judgment and ruling on that is pending.

Mr. Victor Fedeli: This is a bridge too far.

Mr. Gilles Bisson: Whoa. Point of order.

The Chair (Mr. Shafiq Qaadri): We appreciate your Hollywood reference, Mr. Fedeli, but the ruling stands. Mr. Bisson.

Mr. Gilles Bisson: Well, Chair, I was trying as much as possible not to be combative here, but this motion is no different than any other motion that this committee has asked for. It's asking for documents related to what is the mandate of this particular committee. So the committee has—

The Chair (Mr. Shafiq Qaadri): Again, without specifying why, I disagree with you because I think there are some material differences, the precision of which has been pointed out to me by wiser heads.

Mr. John Yakabuski: Well, perhaps they can point the precision out to us.

The Chair (Mr. Shafiq Qaadri): They're not prepared to do that. That's why they're going to confer.

Mr. Gilles Bisson: This is—

Mr. John Yakabuski: That's a bit unfair.

Mr. Victor Fedeli: That's awful.

Mr. John Yakabuski: If they can point that precision out to you, Chair, as a member of this committee and the Chair of it, I think it's only fair that they point that precision out to the other members of the committee who are not Chair.

The Chair (Mr. Shafiq Qaadri): Thank you. I appreciate what you're saying, and I certainly support your request for full information. I think the issue is that the potential issues that have been identified—whether or not that will lead to this being in order or out of order, admissible or inadmissible—are still to be discussed or deliberated upon.

Mr. John Yakabuski: I understand, but they can point those issues out to you, Chair. I don't see how they or you could fail to relay that to us as the members of the committee. You stated that they've given you some information as to matters of precision, but you cannot relay that to us as members of the committee?

The Chair (Mr. Shafiq Qaadri): I appreciate that. I think the work of the Chair is not necessarily to share the process by which these rulings are reached but its product, and we'll need to defer judgment on that.

Mr. Tabuns, et après, M. Bisson.

Mr. Peter Tabuns: I think the disadvantage you put us at is that if there is something that can be corrected in this motion so it can go forward, we're quite willing to look at any correction that's required. But if we have no idea what you see as the weakness or failing, it makes it impossible for us to actually carry forward our business. As Mr. Bisson has said, this is not dissimilar to many requests we've put forward for documents over the last half-year.

The Chair (Mr. Shafiq Qaadri): Thank you, and to be clear, these motions are not being ruled out of order.

Mr. Peter Tabuns: I understand that.

The Chair (Mr. Shafiq Qaadri): We have simply asked that the table be able to confer, with more time, on the exact meanings.

Mr. Bisson.

Mr. Gilles Bisson: Okay, I appreciate that a Chair seeks advice from the Clerks and from other staff that are associated to the committee; that I can appreciate and understand. But it seems to me at this point that it's getting a bit beyond the pale because what's being asked for here is no different than the motion that was asked before. We're asking for stuff related to the Oakville and Mississauga gas plants, which is part of the main motion that was passed in the House. In regard to the issue of

contempt and the non-release of documents, we're asking for information—emails—from the House leader's office. Again, that is not outside of the purview of what the motion of the House was. I'm a little bit miffed here in the sense that, again, you seem to be trying to find a way to say no to things that I think are in order.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Are there any further comments?

Mr. Victor Fedeli: Yes.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Fedeli.

Mr. Victor Fedeli: Is it the date that's under consideration? These are the same dates that the Auditor General is looking for facts as well. If the Auditor General can have these facts, why can't we?

The Chair (Mr. Shafiq Qaadri): As I say, with respect, the table has asked for time to confer on this. I don't think they are prepared to answer specific questions that you're asking.

Mr. Bisson.

Mr. Gilles Bisson: In fairness, Mr. Tabuns gave you this motion about a half-hour ago. It would have been helpful at that time if either the Chair or a Clerk of the Committee could have come to us and said, "Listen, we have a problem with part of your motion. Here's our concern," at which point we could have tried to address that particular issue, if there is an issue that arises. To all of a sudden be told that we've got to hold off till next week I think is a bit beyond the pale.

The Chair (Mr. Shafiq Qaadri): I accept what you're saying. I'm not sure that it's entirely the Clerk's responsibility to alert you that they need more time. I think that more properly comes from the Chair, and that usually is done only once it is formally presented.

Mr. Gilles Bisson: Can I ask the permission of the Premier? Maybe the Premier would like to give us these documents. Does this direction come from the Premier's office? Where the heck is this coming from?

The Chair (Mr. Shafiq Qaadri): I don't believe it's coming from the Premier's office, but I think—

Mr. Gilles Bisson: Well, you're saying it's not coming from the Clerks. Did I misunderstand—it's not coming from the Clerks. Who's giving you this direction if it's not the Clerks? Did I misunderstand a little while ago?

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Gilles Bisson: Did I misunderstand when you said it wasn't the Clerks who are telling you to do this?

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, the entire process here is through the Chair, but obviously with the advice of our table officers, with legal counsel, with research and with our more senior Clerk in the background. You're welcome to search for other sources of this direction, which I do not think exist, but that's as I—

Mr. Gilles Bisson: So this is being directed by the Clerks. Is what you're saying?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Gilles Bisson: I thought I misunderstood. Again, this is no different than any motion we've had in the past.

The Chair (Mr. Shafiq Qaadri): All right. Thank you. Are there any further issues before this committee? Yes, Mr. Fedeli.

Mr. Victor Fedeli: One more point to make, here, and the only reason I'm going to bring this up is because I don't want to hear a ruling before our side—to at least present some evidence. If it is to do with the date, the Auditor General has an active investigation on the cost of Oakville, up to and including today. We cannot be constrained by a date. The cover-up continues, up to and including today. These are data that we require in those emails. We're asking respectfully that you reconsider. This is information that we require. It is no different than any information we've had in the past.

We've had evidence here that the cover-up continues on a day-by-day basis, and to be quite frank, this only fuels the language of the cover-up when we have these kinds of arbitrary rulings—new to us, unlike the rulings that passed our motions last week, the week before, the week before, the week before, the week before, and probably the ones we're going to bring next week after this.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Mr. Leone.

Mr. Rob Leone: Well, first, Chair, I appreciate the fact that you're letting us talk about this, because I think it's a very important matter that we need to deal with. I am, as members have stated on this, deeply puzzled by what has transpired. It seems that the whole approach to this committee changed once we uncovered a document that said the Speaker potentially was intimidated by members of the Legislature, their staff and members outside of the Legislature.

That, I think, is what we're having a lot of difficulty with. Every time we start trying to get information on a different point of view—asking questions, asking for more documentation—it seems that from that point forward, the new MO of what's being advised is simply to suggest that we're going to nip it in the bud before it can actually become public. That is, in essence, what the trouble that we're having, the difficulty that we're having, with this is.

As everyone around this room knows, committees of this Legislature have an unfettered right to persons, papers and things, and we have that responsibility to investigate what was put before us. Since that point in time, we seem to have been stonewalled for mysterious procedural reasons. We haven't actually had an account of exactly why these things are out of order. If you are reserving judgment, which is your prerogative, I would hope that there is a detailed explanation provided to us, precisely detailing why these are out of order. And if that explanation does come forward, it should be backed by procedural rationale.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Leone, just to advise you, neither motion has been ruled out of order, but there are some issues that have been raised, for which more time has been requested by the table.

Mrs. Donna H. Cansfield: Chair?

The Chair (Mr. Shafiq Qaadri): Ms. Cansfield.

Mrs. Donna H. Cansfield: Chair, I'd just like to go on record that if these motions were to come before this committee, we would vote in favour of these motions. I think that that's an important conversation to have.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Cansfield. Mr. Yakabuski.

Mr. John Yakabuski: It was on the same line as Mr. Leone. The temperature and the tenor of this investigation and the committee's access to records and information and the ability to even ask questions changed dramatically when it became public—of the issue of the Speaker and the attempts by government operatives—Liberal operatives—to intimidate and/or influence the Speaker.

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We've had innumerable motions before this table. In every other instance that I can recall, and I have not been at every single meeting, but if we brought a motion forward, the table would immediately say it was out of order if it was out of order—and I know you're not saying it's out of order. But there was never an instance where they would say, "We're not saying if it's out of order or if it's in order, but we just want to have a chance to talk about it."

Mr. Rob Leone: For a week.

Mr. John Yakabuski: For a week. So there seems to be—and I'm not one that likes to subscribe to these conspiracy theories, but things have changed and there seems to be some control being exerted from somewhere with regard to the ability of this committee to act freely and unfettered and unhindered by other means.

If you want to say a motion's out of order, so be it. Indicate why. We don't require great explanations, but it can be very minor items, which has been pointed out in the past, but we have never gone through this dissertation where, "Well, we're not saying if it's out of order, we're not saying it's in order, but we need to talk about it."

Mr. Rob Leone: For a week.

Mr. John Yakabuski: For a week.

The Chair (Mr. Shafiq Qaadri): I would just—

Mr. John Yakabuski: With all due respect, there's a change in the way that this committee is operating. We never had two Clerks here before in the past when the House was in session. We never had a situation where Clerks were conferring about whether they'd allow us to even talk about something. It was out of order? It's out of order.

The mandate has been determined by the House. If some power's trying to say, "We want to cut this thing off at the knees" or "We want to slow this committee" or "We want to stop this committee; we want to shut it down, whatever, it's gone on long enough"—I don't know what the thinking is, but we should be made aware of that because the way that this committee is being treated has changed.

Mr. Rob Leone: Big time.

The Chair (Mr. Shafiq Qaadri): Thank you.

Mrs. Donna H. Cansfield: Chair?

The Chair (Mr. Shafiq Qaadri): Just a moment.

Just to very briefly say that your suppositions, I think, are generally incorrect on three counts: one, there is usually more than one Clerk present, firstly. They may not always be visible to you; that's a separate issue.

I think on many, many occasions we have deferred issues, including motions, including, for example, receipt of confidential documents, which will, by the way, be the subject of a subcommittee meeting immediately following this meeting.

Thirdly, I would also say that you are entitled, absolutely, before, during and after committee to speak with Clerks on the language, the crafting, the wordsmithing of these motions so that they pass muster immediately. They are available to you and certainly are available, for example, to confer, to edit and to distribute, and to make sure that they are precisely in order before they are even presented here. In fact, I would encourage you to do so in the future.

Now, with that, Ms. Cansfield.

Mrs. Donna H. Cansfield: Thank you, Chair. There has been a fair amount of discussion and some suggestions, and I appreciate that there's—but maybe what we could have is some idea or some explanation from the Clerks why it requires a full week to have a review on something that's been so similar as in the past.

The Chair (Mr. Shafiq Qaadri): Ms. Cansfield, I appreciate what you're asking for. Whether they use the full

week or want to get back to you within 48 hours, I would leave that to them. But that's what they've requested.

Yes, Mr. Fedeli.

Mr. Victor Fedeli: Chair, your leader, Premier Kathleen Wynne, has again said one thing in the Legislature and we're seeing a very opposite reaction here as the day unfolds. She has promised us to be able to get to the truth with full and open access to documents, and today this committee has learned that we no longer have full and open access to our documents, and we'll be taking this up.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I would encourage you to take it up through whatever channel you see fit.

Mr. Victor Fedeli: We intend to.

The Chair (Mr. Shafiq Qaadri): I disagree, of course, strongly with your characterization, but in any case—

Mr. Victor Fedeli: Says one thing; does something different.

The Chair (Mr. Shafiq Qaadri): Is there any further business? Mr. Delaney.

Mr. Bob Delaney: Chair, it is your prerogative to request time to review a motion, and as such, procedurally, I think you're correct.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. A subcommittee meeting follows this meeting. This committee is now adjourned.

The committee adjourned at 1425.

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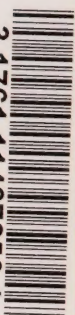
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